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PART I

THE PRE-CONQUEST PERIOD
(16th CENTURY - 1760)

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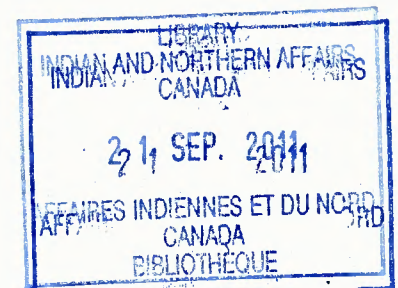
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PART I

THE PRE- CONQUEST PERIOD
(16th CENTURY - 1760)

Part I

Treaties, January 1971.

1. Introduction

The History of pre-Conquest America in the fifteenth and sixteenth centuries reflects the interaction of such elements as geography, the activities of the various Indian tribes and the advancing frontier of European civilization. Every aspect of this advancing frontier whether military, religious, commercial or settlement was to some degree affected by geography, while all impinged on and were usually in conflict with the interests of the original inhabitants of the continent, the Indians.

2. Areas of French Settlement and Exploration:

The voyages of Jacques Cartier (1534-1536) to the Indian villages of Stadacona and Hochelaga initiated French exploration and settlement along the St. Lawrence. Although Cartier spend the winter at Stadacona on his second voyage, transactions with the Iroquois people were limited to the exchange of trinkets and a few furs. At this time discovered Canada consisted only of Stadacona (Quebec City) and its immediate surroundings (See Map 1), * although Cartier had ascended Mount Royal (at Hochelaga) and viewed mountains and forests to the south and west.

It was not until Cartier's third voyage that a settlement was established at Cap Rouge^o in 1541-42 (the oldest French colony in America). Sieur de Roberval who had accompanied Cartier remained through the winter of 1542-43, returning to France in the spring.

Early maps of the world incorporated French knowledge of the new world. The "Harleian" map of 1542 is thought to be the oldest map of the St. Lawrence prominently indicating the Saguenay, St. Maurice, Ottawa and Richelieu Rivers. Pierre Descellier's map of 1550 is important for two reasons. The first, that

* Trudel, M. Atlas de la Nouvelle - France; Quebec:
Presse de L'Universite Laval, 1968.

^o See Map 1.

French exploration of the St. Lawrence had not produced any new cartographical details - all knowledge was dependent upon Cartier's accounts. Second, French knowledge of the south coast of Labrador was quite extensive, the coast and interior being known as "Terre du Labrador"; no doubt French fishing fleets on the Grand Banks and in the Gulf of St. Lawrence visited this coast and were able to provide accurate information to the French cartographers.^o By the end of the sixteenth century French settlement and consequent knowledge of the St. Lawrence had not surpassed Cartier's accounts of mid-century. In 1569, Gerardus Mercator published a map based on Cartier's accounts, and for the first time applied the name St. Lawrence to the Gulf area (Map 3). In 1597, a book entitled "Descriptionis Ptolemaicae Augmentum sive Occidentis Notitia" by C. Wytfliet, contained a map of "Nova Francia et Canada" (See Map 4)* showing very little of the upper St. Lawrence River.

Serious French attempts to colonize New France did not begin until the seventeenth century after French colonial endeavours in Florida (See Map 5)* and Brazil (See Map 6)* had failed. In 1603 Pierre Du Gua, sieur de Monts, obtained the title of Vice-Admiral and Lieutenant General of New France along with a ten year commercial monopoly, on condition that he establish a colony of 60 settlers. Both de Monts and Champlain had previously spent a summer at Tadoussac (1600); Champlain had explored the St. Lawrence (as far as Mont Royal) and its tributaries, the Saguenay and Richelieu rivers. De Monts chose to establish a colony at Port Royal on the Bay of Fundy in 1606 (Map 2), mid-way between the ill-fated colonies of Tadoussac (1600) and Sable Island (1598). However, the Acadian adventure met with failure due to scurvy, high maintenance costs and lack

^o This map could not be reproduced due to its faded condition. It may be found in Marcel Trudel's, Atlas de la Nouvelle - France.

of trade. Under continual pressure from Champlain, de Monts was persuaded to return to the St. Lawrence valley in a renewed attempt to establish a commercial colony, the aim being to recoup the losses suffered at Port Royal and to forestall the increasing numbers of summer traders at Tadoussac. In July 1608, Champlain established a small colony at the narrows of Quebec up-stream from Tadoussac. The colony grew extremely slowly for by 1630 only 100 French were living in Canada. ¹

In June 1615 a new element was introduced into the Quebec colony when the Recollet order of Minor Friars were sent to Canada. This marked the beginning of the great missionary drive by Counter Reformation French clergy to convert the nomadic hunters of the interior. ² Thus by 1615, the two inseparable motivating forces behind French settlement in Canada had been introduced - commerce and religion. By the time of the Conquest (1760) all major French settlements - Montreal (1642)*, Three Rivers (1634) and Quebec, had been established either for commercial or religious reasons. The military presence along the frontiers of New France was introduced to protect the commercial outposts and the clerics who roamed widely throughout the Indian country seeking converts.

Unlike the Thirteen Colonies to the south, French expansion did not take on the character of a tidal wave. Indeed, by 1760 the population of New France was a mere 70,000 compared to 1,500,000 in the Colonies. Settlement was mainly along the St. Lawrence between Quebec and Montreal. Because the raison d'etre of French settlement was the fur trade, the pattern of French settlement conformed to the

1. Eccles, W.J. The Canadian Frontier, 1534-1760. Holt, Rinehart and Winston (1969) p. 24.

2. I.B.I.D. p. 20.

* Ville Marie (later Montreal) was founded by the Messieurs de St. Sulpice, a religious order.

needs of the trade. Settlers were established at the major junctions of the fur trade routes to meet fur laden canoes from the interior. Although numerous attempts and inducements were made to foster the colonization of New France the fur trade proved inimical to settlement. Some blame may be laid to the climate and the religious qualification for settlers; however, the trade did not encourage the establishment of secondary industry. Essentially, New France remained a large scale fur trading enterprise until the Conquest.

French exploration of the interior also reflected the dominant position of the fur trade in early Canadian life. The voyages of the early explorers, clerics and coureur de bois were aimed at extending the French fur trade and religion to the interior of the American continent. The French posts established among the western tribes became centres not of settlement but for maintaining the allegiance of the Indians, the collectors so vital to the success of the fur trade.

By 1760, French explorers had travelled the interior of America from Hudson Bay to the Gulf of Mexico and as far inland as the Black Hills of South Dakota. A network of forts and waterways linked the small St. Lawrence based colony with the varied resources of almost an entire continent, yet the very nature of a fur trade economy determined that the French would never utilize these resources to the full.

3. Areas of English Settlement and Exploration:

Early settlement of what later became known as the Thirteen Colonies was at first divided among the Dutch, Swedish and English. The Dutch controlled most of present New York State from the colony of New Amsterdam at the mouth of the Hudson River and Forts Nassau (1614) and Orange (1624) near the site of Albany.

The first English settlements were at Jamestown (Virginia) in 1607, and Plymouth (Massachusetts) in 1620. The first decade of the 1600's saw the beginning of a large migration from the British Isles. Political and religious troubles in England, combined with the vaunted opportunities in America, drew thousands of new settlers to the American east coast. By 1643 the Puritans had established the colonies of Massachusetts, Plymouth, Connecticut and New Haven.

By the mid 1600's Britain, the Netherlands and Sweden had established settlements in America. However the effect of the British migration soon became apparent as thousands flocked to her colonies. Unlike the colonists of New France this vast wave of new settlers pressed inland travelling up the rivers and valleys to the interior. In 1664 Britain had seized New Amsterdam from the Dutch, changing its name to New York, thus remaining (with the exception of the French in Acadia) the only major European power on the north Atlantic seaboard.

British settlement continued to expand until the mid 1700's by which time settlers had reached the valley of the Ohio River. Unlike the colonists of New France, the English were not subject to religious qualification; also the climatic conditions they experienced were not as severe. More significantly the fur trade did not assume the overriding dominance that it did in New France. Commerce was diversified: the fur trade in northern New York state and Pennsylvania; farming and light industry in the mid-Atlantic colonies, and cotton in the south. The Old Colonial System fostered by Britain encouraged the exportation of raw minerals (i.e. timber, cotton, minerals, furs) from her colonies to England where they were processed into a wide range of manufactures.

Unlike the French, British exploration of the interior in advance of settlement was minimal. However, the British did occupy forts on Hudson Bay

from which traders for the Hudson Bay Co. eventually set out to explore Rupert's Land.

The boundaries between French and English spheres of influence were not precise. French clerics, coureur de bois and allied Indian tribes often travelled through lands granted the Hudson Bay Co. by the Charter of 1670. Pierre Radisson and Medard Chouart des Groseilliers travelled to James Bay while pursuing the fur trade for the French. Indeed, a punitive French expedition along the Mohawk River in Upper New York State was objected to by the English governor for it meant trespass on lands claimed by the English.³

By 1760, the French had succeeded in surrounding the English colonies on the Atlantic seaboard. With Louisiana on the west and New France to the north, English activity be it exploration or settlement was severely limited. However, such was not the case in the Hudson Bay area.

In 1670, Charles II had granted the Hudson's Bay Co. a trade monopoly over "all those Seas Streights Bayes Rivers Lakes Creekes and Soundes in whatever Latitude they shall bee that lye within the entrance of the Streights together with all the Landes Countryes and Territoryes upon the Coastes and Confynes of the Seas Streights Bayes Rivers Lakes Creekes and Soundes aforesaid which are not now actually possessed by any of our subjectes or by the subjectes of any other Christian Prince or State." In terms of present-day Canada, Rupert's Land would include all of Manitoba, Saskatchewan, (except for the north-west corner,) and the southern half of Alberta.⁴ In addition it comprised the northern half of Quebec and Ontario beyond the height of land.

3. Edmonds, W.D. The Musket and the Cross - Boston: Little, Brown and Company 1968. p. 143.

4. See Map II, in "The Attitudes and Policies of the Federal Government towards Canada's northern territories". M.A. Thesis, John A. Bovey. University of British Columbia, September 1967.

The British were able to construct a chain of forts along the shore of Hudson Bay at Fort Nelson (1684), Fort Severn (1685), Fort Charles (later Rupert's House)*, Fort Albany (1678) and Fort Churchill (1717). From these posts company agents pushed inland to trade with the Indians of the interior and to explore the farthest reaches of this remote country. As time passed company agents were compelled to push westward in search of trade. In 1689, a little over 20 years after the arrival of the "nonsuch", Henry Kelsey set out from York Factory, exploring northwards along the west coast of Hudson Bay for a distance of some 300 miles. In the next year he travelled up the Nelson River to Lake Winnipeg, then followed the Saskatchewan to become the first known white man to see the great plains and buffalo herds. Sixty years later, Anthony Henday followed Kelsey and explored the plains to within sight of the Rocky Mountains. In 1770, after an abortive attempt earlier in the same year, Samuel Hearne succeeded in reaching the Arctic Ocean. ⁵

The extent of Rupert's Land remained relatively ill-defined; its boundaries were disputed first by New France (Sieur d'Iberville captured York Factory in 1697) then by the traders of the North-West Company and ultimately by the British province of Canada. ⁶ The bounds were never to be determined exactly as a commission to be appointed under the Treaty of Utrecht (1713), came to no conclusion; finally, there was no real need to establish the precise boundaries of the British territory as the company surrendered its territorial jurisdiction to the Queen in right of Canada in 1870. ⁷

4. Indian Groups

Caught between the contending European powers in America were the two major

5. Encyclopedia Canadiana (1962), vol. 5 p. 183.

6. I.B.I.D. p. 182.

7. I.B.I.D. p. 182.

* No date available.

Indian linguistic groups of eastern North America - the Algonkian and Iroquoian peoples.

Dr. Diamond Jenness, an internationally known authority on Canadian Indians, has labelled the Algonkian group - "The Migratory Tribes of the Eastern Woodlands." Included in this group are the Ojibiwa; Cree; Montagnais; Naskapi; Algonkin; Micmac and Malecite tribes. The Iroquois (including the Huron off-shoot) are simply designated - "The Agricultural tribes of the Eastern Woodlands."

(a) Indian land tenure concepts

Perhaps the most intriguing aspect of Indian organization (and that which has come in for a great deal of debate among anthropologists) centres on the social organization of Indian hunting territory.

According to Diamond Jenness:

"All the aborigines of Canada, even the agricultural Iroquoians, were to a greater or lesser extent migratory. The prairie and northern Indians roamed almost continuously in search of game and several years often elapsed before they revisited exactly the same localities. In these circumstances they required either portable dwellings, or dwellings that could be erected in an hour or two from the materials that nature supplied around them. The eastern Algonkians, who seldom lingered in one spot more than a few weeks, had much the same needs. One might have expected more substantial dwellings from the Iroquois, who were tied down by agriculture to a more sedentary life. Their dwellings were indeed larger than those of other tribes east of the Rocky Mountains, but not more durable, for even they practically deserted their villages for three or four months each year in order to fish and hunt, to work on distant farms or to trade with their neighbours. Moreover, when there was no longer sufficient wood for their fires, or when the land, long tilled, produced scanty crops, they abandoned their villages entirely and erected new homes in another locality. Any dwelling that provided tolerable shelter for ten to fifteen years would satisfy their needs; to expend time and labour on buildings that would outlast this period was useless. Conditions were different on the Pacific Coast. There the natives made seasonal migrations indeed, but the greater part of the year they lived in fixed localities, which they occupied generation after generation, unless dislodged by wars or other calamities." 8

8. Jenness, D. Indians of Canada. Ottawa: Bulletin 65, Anthropological Series 15, National Museum of Canada; Queen's Printer, 1967. p. 84.

On the concept of property holding, Dr. Jenness concluded that the migratory groups (Algonkian peoples) had no "real" property

"...the hunting territory and fishing places belonged to the entire band, and were as much the right of every member as the surrounding atmosphere. Members of other bands might use them temporarily, with the consent of the owner band, or they might seize them by force; but land could not be sold or alienated in any way. It is true that in eastern Canada individual families, or groups of two or three families very closely related, have possessed their private hunting-grounds within the territory occupied by the band since the early days of European settlement; that they have handed them down from father to son, or in some cases to a son-in-law, in regular succession; and that the boundaries were so well defined by geographical features that in many districts we can map them today just as we map our countries. Nevertheless, it does not appear at all certain that this system of land tenure pre-dates the coming of Europeans; for a similar partition of the territory of the band into family hunting grounds has occurred among the Sekani Indians at the headwaters of the Peace River during the last hundred years, after the necessities of the fur trade compelled the families to disperse among different creeks and rivers." ⁹

This position was enunciated by Jenness in 1932. Previous to this (1928), anthropologist F.G. Speck had proposed a different thesis. In a paper entitled "Land Ownership among Hunting Peoples in Primitive America and the World's Marginal Areas," Speck described the family hunting group as composed of individuals united by blood or marriage, and maintaining the right to hunt, trap, or fish in well-defined, inherited districts. He believed that possession and inheritance of territory had existed in ancient times and was evidence of a strong tendency towards an individual type of ownership, as contrasted with that of a collective or communal nature. ¹⁰ In 1939, Speck and Dr. Loren C. Eiseley took issue with Jenness' position and proceeded to reaffirm the views which Speck

9. Jenness, D. Indians of Canada p. 124.

10. Speck, F.G. "Land Ownership among Hunting Peoples in Primitive America and the World's Marginal Areas". International Congress of Americanists, Proceedings, 1928, pp. 374-8.

had propounded in 1928.¹¹ However, as anthropologist Alfred G. Bailey has noted, Speck and Eiseley emphatically discounted the impact of the fur trade upon Indian institutions and attendant land holding systems.

One of the better studies of Indian family hunting territory was written by John M. Cooper, entitled "Is the Algonquian Family Hunting Ground System Pre-Columbian?" Cooper maintained as a result of his research that the individual rather than the family was the real title-holder although "land remains customarily in the family, passing down as a rule by donation or inheritance therein, and from this angle...looks more like a group right. But on the other hand there is no rigid prohibition against alienation of land, at least by donation, to one not connected by blood or by marriage with the title-holder."¹² The right of land possession, use, and enjoyment -- appears definitely to be something more than a usufruct."¹³

Alfred G. Bailey, after reading Cooper's thesis, commented that:

"-- the question is far from a simple one, for "sovereignty" is largely centred in the family, extended family, or kin group, and one wonders whether one might not sometimes be justified in speaking of band "sovereignty" where the family is very extended or the kin grouping large. Clearly allotment of hunting territories may take place within the group at the beginning of each hunting season, so that something may be said on both sides of the question."¹⁴

Cooper also indicated he was not that sure of his own findings for near the conclusion of his paper he remarked that he was not certain "whether we are dealing with ownership in severalty or with band or tribal territorial sovereignty or with

11. Speck, F.G. and Loren C. Eiseley, "Significance of Hunting Territory Systems of the Algonkian in Social Theory." American Anthropologist, New Series, XLI (1939) pp. 269-80.

12. Cooper, John M. "Is the Algonquian Family Hunting Ground System Pre-Columbian?" American Anthropologist. New Series, Vol. 41 p. 67.

13. I.B.I.D. p. 69.

14. Bailey, A.G. The Conflict of European and Algonkian Cultures, Toronto, University of Toronto Press, 1969 - p. XXI.

something intermediate between the two ---".¹⁵

In the case of Speck and Eiseley, referred to above, much effort had been made to refute statements made by Father Le Jeune in the Jesuit Relation of 1635. Thirty-two years after Champlain's voyage the Jesuit stated:

"Now it will be so arranged that, in the course of time each family of our Montagnais, if they become located, will take its own territory for hunting, without following the tracks of its neighbours".¹⁶

Jenness had interpreted this statement to mean that the Montagnais, and presumably its neighbouring tribes in eastern Canada, did not subdivide the band territory prior to the advent of fur traders. Father Le Clercq, who spent time among the Indians of the Maritimes stated that among the Micmac "---it is the right of the head of the nation --- to distribute the places of hunting to each individual".¹⁷

Anthropologists such as Cooper, Speck and Eisely have tended to discount statements made by the Jesuits because acceptance would discount their own ideas of an individual, and original, aboriginal tenure. But as Bailey has already noted, these anthropologists failed to credit the profound impact of fur-trading companies and missionary societies on the culture of the Eastern Algonkians.

In 1952, Eleanor Leacock presented a doctoral dissertation at Columbia University entitled "The Montagnais 'Hunting Territory' and the Fur Trade," in which she found, in contrast to Cooper that, "what is involved is more properly a form of usufruct than "true" ownership".¹⁸ According to Miss Leacock, the

15. Cooper, J.M. "Is the Algonquian Family Hunting Ground System Pre-Columbian?" p. 83.

16. Thwaites, R.G. (ed), Jesuit Relations Vol. VIII 1634-36 Cleveland: The Burrows Brothers Co. p. 57.

17. Jenness, D. Indians of Canada. p. 124.

18. Leacock, E. "The Montagnais "Hunting Territory" and the Fur Trade." American Anthropological Association. Vol. 56, No. 5, Memoir 78, p. 2.

pre-Columbian Indian economy shifted from co-operative subsistence caribou hunting, in which proceeds were shared, to post-Columbian fur trapping, personally oriented, and dependent upon European trade goods. With this change, a family came to resent trespass on its trapping grounds and developed a sense of proprietorship in the land. The inescapable fact, she wrote, "is that the strength of individual land holding patterns characteristic of the western Montagnais decreases, not only northward toward the tundra where the Nascopi used to depend almost entirely upon the migratory caribou, but also outward from the centre of the earliest and most intensive fur trade." ¹⁹ In seeking additional reasons, other than the fur trade, to account for these changes, she cited the scarcity of game resulting from intensive killing of fur beavers with weapons of European origin, the desire of the French to deal with individuals rather than groups, and the effect of marriage between native women and white trappers.

In 1957, Philip Garigue, in an article entitled "The Social Organization of the Montagnais-Naskapi," commented upon legal concepts of the Montagnais-Naskapi:

"Lips (1947a, 427) reports that such abstract terms as 'property', 'possession', 'ownership', and so on, are not known in Montagnais-Naskapi. To circumscribe these nouns, the verb 'to own' is used in various forms. The strict legal sense of ownership is thus reported to be very limited. Ownership of a hunting ground, for instance, is manifested by the privilege to hunt or trap on that tract of land. Such hunting-grounds cannot be sold outright, nor may any hunting privileges thereon be sold. It would seem, however, that whenever such privileges to hunt are given to persons not 'members' of the 'owning' family, they then cannot be revoked.

Hunting rights over land can be acquired either through being born in a family which already possesses a hunting-ground, or through the recognition by the members of the band that someone has acquired special hunting rights over a given area. Exclusiveness of hunting rights tends to lapse on continued non-use, but some form of rights is said to be existent even after long periods of non-usage.

19. Bailey, A.G. The Conflict of European and Eastern Algonkian Cultures.
p. XXII.

If quarrels should arise over the actual 'ownership' of land rights, public opinion is often the deciding factor in the distribution of land, rather than priority of right. It is reported by Lips (1947a, 437), however, that legal concepts derived from European law are beginning to appear among the Montagnais-Naskapi. Strict claims of ownership are now advanced, based upon non-traditional practices." 20

Julian H. Steward, in Theory of culture change, contended that environmental forces determined the social and economic organization of hunting and gathering peoples. However, Steward's ideas of "cultural ecology" disregarded non-environmental variables as important in moulding a people's way of life.

Steward agreed that the eastern Algonkians formerly depended on cooperative caribou hunting by a band of several hundred persons. After the introduction of the fur trade, trapping became of primary importance, and European foods supplied the deficiencies resulting from decreased hunting. The family replaced the band as the basic socio-economic unit. The adoption of conservation practices and the trapping of small game by family units led to the development of hunting territories.

In 1963 Edward S. Rogers presented a paper entitled "The Hunting Group - Hunting Territory complex among the Mistassini Indians". Rogers cautioned against applying his data to other tribes but noted that it was similar to that collected among the Round Lake Ojibwa in Northern Ontario. While Rogers considered hunting groups an ancient social pattern, the evolution of specific hunting territories for each band was a post-contact phenomenon. Between 1600 - 1800 Rogers concludes that:

"There is no evidence that each (hunting) group controlled a hunting territory or made habitual use of a particular area" 21

20. Garigue, P. "The Social Organization of the Montagnais-Naskapi". Anthropologica. No. 4 (1957). The Research Centre for American Anthropology, University of Ottawa. p. 126.

21. Rogers, E.S. "The Hunting Group - Hunting Territory complex among the Mistassini Indians". National Museum of Canada. Bulletin No. 195. Anthropological Series No. 63. 1963. p. 74.

Between 1800 and 1850,

"The more extensive European contacts that developed in the early nineteenth century brought about certain modifications in the socio-economic system.

Each hunting group tended to exploit a particular area, but no rigidly defined rights to the territory existed ..."²²

By 1850 to 1900 numerous changes had occurred in the Mistassini society.

"Furbearers were now considered private property, although resources for home consumption were free goods. A hunting territory system was rigidly adhered to; the boundaries of each territory were known, and trespass was frowned upon. Conservation was practised. A territory was inherited generally by a family member. The shaman's power was now directed against the violation of property rights; the chief acted in the settlement of disputes over land."²³

Between 1900 and 1950,

"Each hunting group had a territory to which it normally returned each year. The territories, which all had known boundaries, were inherited. Resources for home consumption were considered free goods, but furbearers tend to be considered private property."²⁴

Being an agricultural people, Iroquoian land holding concepts differed from those of the truly nomadic hunters. In An Ethnography of The Huron Indians 1615 - 1649, Elizabeth Tooker found that "All uncleared land was common property. An individual could clear and plant as much as he wished. This land then remained his for as long as he cultivated it. If, however, he did not use it, anyone else could plant it."²⁵ Miss Tooker then proceeded with a brief discussion of Iroquoian land tenure.

"Use ownership of land, ownership of land by the user for as long as he cultivates it, is a common form of ownership of agricultural land among North American Indians. The effect of the practice is to distribute agricultural land in an equitable manner - each individual family having sufficient land for its needs.

22. I.B.I.D. p. 75.

23. I.B.I.D. p. 75.

24. I.B.I.D. p. 76.

25. Tooker, E. An Ethnography of the Huron Indians 1615-1649. The Huronia Historical Development Council (1967). p. 60.

Among the Iroquois, the land used by the women was also owned by the women (the matrilineage). This included agricultural land and land on which berries, nuts, roots, bark, and medicines were collected. They also owned the house and the burial grounds. Among the Wyandot also, the women owned the agricultural land and the houses.

These principles of land ownership are illustrated in the manner of indicating the ownership of melons planted in patches in the woods which had been cleared by burning. The ownership of the patch was indicated by a pole painted with the clan totem and name sign of the owner. The clan totem indicated that the patch belonged to the clan and that, if necessary, any clansmen might take the fruit; the name sign indicated that the patch had been cleared; planted, and cultivated by that individual and he had, in practice, a prior right to the fruit." 26

George T. Hunt in The Wars of the Iroquois, A Study in Intertribal Trade Relations, discovered from the Jesuit Relations that the Hurons even "... with their maize culture...had no land title as did the Iroquois..." 27 However as Elizabeth Tooker has noted such private property concepts among the Iroquois applied only to land under cultivation by an individual while all uncleared land was common property.

(b) The Impact of the Fur Trade on Indian society

The economic alliance between the French and Indians (forged by Champlain) was one of the most important features of New France. Indeed, the role of the Indian in the Canadian fur trade has been the subject of many monographs. Less fully appreciated was the effect of this alliance upon the Indians themselves.

The arrival of the Whites radically disrupted the true Indian bands, which originally had been organized on the basis of kinship and had strict rules about residence after marriage. Within a few decades after the arrival of the Europeans, band organization was ripped apart almost everywhere in the Sub-Arctic. 28 Those Indians who had survived the consequent warfare, famine, disease and migrations ended their hostilities toward each other and their remnants merged into the

26. I.B.I.D. p. 60.

27. Hunt, G.T. The Wars of the Iroquois, A Study in Intertribal Relations, The University of Wisconsin Press, 3rd ed. (1967) p. 41.

28. Farb, P. Man's Rise to Civilization. New York, Avon Books, 1968. p. 79.

"composite band", an expedient confederation of families in which rules of marriage, kinship, and residence became blurred.²⁹ The important aspect of the new composite band was that it represented an aggregate of families, sometimes numbering a few hundred people, based on cooperation rather than on kinship.³⁰ Any man and woman could marry so long as they were not closely related; after marriage there was no rule as to whether they should live with the husband's family or the wife's family - or with neither. The headman of this tribal unit was acknowledged to be a great hunter and outstanding bargainer, usually representing the band when furs were sold.³¹

The composite band usually controlled in common the principal resources in its hunting territory; the caribou herds, the fishes, the birds, even the trees. Alongside this communal ownership there existed small-scale capitalism - family ownership of territories for trapping small fur animals such as beaver, otter, marten and lynx.³² These latter territories were quite clearly defined and their boundaries known to all inhabitants of the area. Permission had to be obtained for right of passage and reciprocal right of passage assured.³³

The Sub-Arctic Indians (see map) were among the earliest on the continent to be exposed to White culture, long before the formation of the Hudson's Bay Co. in 1670. French companies had been founded during the sixteenth century, and as early as 1550, French ships were sent to Canada with the sole purpose of trading with the Indians.

29. I.B.I.D. p. 79.

30. I.B.I.D. p. 80.

31. I.B.I.D. p. 89.

32. I.B.I.D. p. 80.

33. I.B.I.D. p. 81.

Even at this early date, the French search for furs had given the Indians a brief introduction to capitalism. In 1611, Champlain wrote that the Indians were becoming canny, for they "wanted to wait until several ships had arrived in order to get our wares more cheaply. Thus those people are mistaken who think that by coming first they can do better business; for these Indians are now too sharp." 34

The displacement of native crafts was all but completed by 1670. In 1632, Father Paul Le Jeune observed: "Now that they trade with the French for capes, blankets, cloths, sheets, there are many who use them." Trade had now become such a part of native life that the Indians began to lose most of their old skills. Metal replaced bone and flint; the musket replaced the lance, bow and arrow; the use of steel needles and axes became wide-spread. 35 Within a few decades European technology had practically supplanted the traditional Indian manufactures. The Traders economically seduced the Indians by displaying their wares and in many other ways fostered capitalistic drives. 36 As J.M. Sosin has commented:

"The acute Swedish observer Peter Kahn noted particularly to what extent the natives were dependent on the paraphernalia of the more advanced race. Since the Indians could only obtain utensils, weapons, and goods by trade, the tribes must go either to the French or to the British. The natives realized this. A Wyandotte told George Croghan, the Pennsylvania trader and Indian agent, that no Indian tribe could exist without the support of either of the white nations. They would not live as their ancestors had before the arrival of the Europeans." 37

The advent of the European heralded an upheaval in the Sub-Arctic economy when the traders encouraged the Indians to produce for "trade" rather than for "use."

34. I.B.I.D. p. 82.

35. Eccles, W.J. The Canadian Frontier, p. 59.

36. Farb, P. Man's Rise to Civilization, p. 82.

37. Sosin, J.M. Whitehall and Wilderness

The Middle West in British Colonial Policy, 1760-1775

Lincoln: University of Nebraska Press, 1961. p. 28.

Consequently, the attitude of the Indian switched from the ancient concern with the products of the land to real estate.³⁸ The most important economic ties no longer remained within the band; they now reached outside the band to the White trader. Rather than being in a cooperative relationship with the rest of the band, the band members began to compete. Neighbouring families were no longer insurance against hardships but could instead inhibit the acquisition of limitless furs.³⁹

The White man also influenced Indian hunting practices. Whereas before the arrival of the European a measure of conservation was ensured by the limitations of Indian weaponry, once he acquired guns and a limitless market for furs, the "sale exchange" drive for European manufactures tended to reduce conservation.

As Father Le Jeune noted:

"When the savages find a lodge of them (beavers), they kill all, great and small, male and female. There is danger that they will finally exterminate the species in this region, as has happened among the Hurons."⁴⁰

After the introduction of the fur trade the concept of land ownership and trespass began to change. Trespass was now defined as someone entering another's territory - but only with the intent to obtain furs to sell. It was not trespass if he entered another family's territory to fish, collect berries or obtain bark for a canoe.⁴¹ The products of the land were still owned communally. Trespass applied only to those items desired by the white trader, such as beaver.⁴² Such territory is not proof of an urge to ownership even at the primitive band level. What it does demonstrate is the way in which a relatively stable social organization can meet a new economic challenge and adjust to it.

38. Farb, P. Man's Rise to Civilization. p. 82.

39. I.B.I.D. p. 83.

40. I.B.I.D. p. 83.

41. Thwaites, R.G. The Jesuit Relations and Allied Documents. (Vol. 8), Cleveland, The Burrows Brothers. p. 57.

42. Farb, P. Man's Rise to Civilization. p. 84.

So long as the fur trade remained an important factor in the economic life of North America, the Indian as collector and middleman, prospered to some degree. Despite the fact that to a considerable extent he had lost his old cultural, social and spiritual values (and that Indian had been pitted against Indian for the benefit of the Whites) his living standard had been raised. It was only when his economic usefulness to the Europeans had ceased, and he had been placed on reserves, that the full impact of fur trade period upon Indian society and culture could be ascertained.

(c) An Examination of the two major Indian Linguistic Groups of Eastern North America

The Algonkian peoples are a linguistic group which extend from Labrador to the Rocky Mountains. Certain Algonkian tribes were destined to play an important role in the French-English struggle for the continent: Ojibwa, Cree, Montagnais, Algonkin, Micmac and Malecite peoples (the last being native to the Maritimes).

1 - The Ojibwa:

Numerically ⁴³ the Ojibwa or Chippewa were the strongest aboriginal nation in Canada, controlling all the northern shores of Lakes Huron and Superior, from Georgian Bay to the edge of the prairies, until at the height of land north of Lake Superior they united with their near kinsmen, the Cree. ⁴⁴ They were so numerous and covered such an expanse of territory that they can be separated into four distinct groups: the Ojibwa of Lake Superior; the Missisaukas of Manitoulin

43. Hodge, F.W. Handbook of Canadian Indians. Ottawa: 1913. Hodge population estimates: 1764-25,000; 1794-15,000; 1843-30,000. p. 98.

44. Jenness, D. Indians of Canada p. 277.

Island and the mainland around the Mississagi River; the Ottawa (Traders) of the Georgian Bay area, and the Potawatomi on the west side of Lake Huron.⁴⁵ The Ojibwa of Lake Superior, the Ottawa and Potawatomi formed a loose confederacy that became known in the eighteenth century as the Council of the Three Fires.⁴⁶

The Ojibwa were close friends of the Hurons and closely involved in the fur trade with the French voyageurs. The fact that they were a migratory tribe⁴⁷ dependent upon the hunt for food, made them useful trading partners.

The strength of the Iroquois began to wane about the beginning of the 1700's and the Ojibwa began to extend their territory, due in the main to a decline in the beaver population of their former hunting grounds.⁴⁸ Many of the Mississauga moved into the old territory of the Hurons between Lakes Huron and Erie, displacing Iroquois hunting parties who were attempting to maintain control in these lands. Some of the Lake Superior Ojibwa spread eastward along the north shore of Lake Huron into the Georgian Bay area,⁴⁹ while others moved into parts of Manitoba.

2 - The Cree

The Cree at first inhabited an area of country bounded by the coast-line of Hudson Bay from the Eastmain River to Churchill and the height of land to Hudson Bay.⁵⁰ In the early sixteenth century they appear to have wandered over country to the west of Lake Winnipeg, perhaps between the Red River and Saskatchewan.⁵¹ On obtaining firearms from the Hudson Bay Company, they expanded westward and northward. By the middle of the eighteenth century* they controlled northern Manitoba

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45. I.B.I.D. p. 277.
46. I.B.I.D. p. 277.
47. I.B.I.D. p. 279.
48. I.B.I.D. p. 282.
49. I.B.I.D. p. 282.
50. I.B.I.D. p. 283.
51. I.B.I.D. p. 284.

* Hodge, F.W. Handbook of Indians of Canada, Ottawa, 1913. p. 119.

and Saskatchewan as far as the Churchill River; all northern Alberta; the valley of the Slave River, and the southeastern part of the Great Slave Lake. ⁵² Like the Ojibwa, the Cree were a migratory tribe, dependent upon hunting and the fur trade for their livelihood.

3 - The Montagnais and Naskapi:

These two tribes were the first to come into close contact with the Europeans, yet they remained, in some districts, more primitive than any other Indians in Canada. ⁵³ This was due in part to the character of the country they inhabited, it being so rugged and inhospitable that even today it is not fully explored. The territory of the Montagnais comprised the huge square bounded on one side by the north shore of the gulf of St. Lawrence between the St. Maurice River and Seven Islands, on the other by the height of land that separates the waters flowing into the St. Lawrence from those flowing into James Bay. The Naskapi roamed the entire Labrador peninsula east of a line from Seven Islands to Lake Nichikun, and a second from Lake Nichikun to Ungava Bay, with the exception of the narrow belt of coast-line from Ungava Bay to the strait of Belle Isle, which was controlled by Eskimo. ⁵⁴

Both the Naskapi and Montagnais, like the Micmac, were nomadic peoples living exclusively by hunting and fishing. The Montagnais were the first to welcome Champlain and benefited by his victory over the Iroquois on Lake Champlain. However, the Iroquois, supplied by the Dutch, raided Montagnais territory, exterminating several bands and scattering others. ⁵⁵

The eventual loss of game due to the mass slaughter of moose and caribou by firearms made the struggle for existence harder and starvation soon became more frequent.

52. I.B.I.D. p. 284.
53. I.B.I.D. p. 270.
54. I.B.I.D. p. 271.
55. I.B.I.D. p. 274.

4 - The Algonkin:

Adjoining the Montagnais in the east, and merging in the west with the Ojibwa of the Great Lakes region, were a number of scattered bands commonly classed together as Algonkin. A few bands along the lower Ottawa River, through their proximity to the Hurons, learned to grow a little maize, a few squash and some beans, but their methods were so primitive, and their fear of Iroquois raids so constant, that permanent agricultural endeavours added little to their food supply. ⁵⁶ In the seventeenth century the Iroquois drove them to the north and east away from the lower Ottawa and St. Lawrence Rivers, but when the power of the Iroquois declined they gradually drifted back to their old territory. ⁵⁷ Few in number, and scattered in small bands over a large, densely wooded area where the best hunting and trapping districts lay in the hills away from the main routes of travel and settlement, they exercised slight influence and received very little attention in historical times. ⁵⁸

It is difficult to estimate the numbers of the Algonkin in the early sixteenth century when Cartier sailed up the St. Lawrence, for previous to the arrival of French missionaries and fur traders at their camp sites, the tribe had suffered heavy losses from disease, and some bands had been scattered by the Iroquois. A reasonable estimate of the pre-European population would place it between 3,000 - 4,000. ⁵⁹

5 - The Micmacs:

The Micmac people at the time of their discovery by Europeans occupied not only the whole province of Nova Scotia, including Cape Breton Island, but also the northern portion of New Brunswick and neighbouring Prince Edward Island. ⁶⁰ They were

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56. I.B.I.D. p. 276.
57. I.B.I.D. p. 276.
58. I.B.I.D. p. 276.
59. I.B.I.D. p. 276.
60. I.B.I.D. p. 267.

a typical migratory people who lived in the woods during the winter months hunting moose, caribou, and porcupine, and in the spring moved down to the seashore to gather shellfish, to fish at the mouths of rivers, and to hunt seals near the coast.⁶¹ Their origin is uncertain, however, their unusual Algonkian dialect suggests they may have been late intruders into the Maritimes, coming perhaps from the northwest.⁶²

The old customs of the Micmac quickly disappeared after the coming of the White-man for the tribe quickly took up agriculture, submitted to the teachings of the Jesuit missionaries, and intermarried freely with the French colonists who had settled in their midst.⁶³ Like the Malecites, they were faithful allies of the French throughout the years of the seventeenth and eighteenth centuries.⁶⁴

6 - The Malecite:

The Malecite differed from the Micmac in several important ways. First, they spoke a different dialect, and second, raised large crops of maize, so that they were rather less dependent on fishing and hunting than their neighbours, the Micmacs, who do not seem to have practised agriculture before the seventeenth century.⁶⁵ Politically, the Malecite were completely independent, and indeed on one occasion actually hostile to the Micmac.⁶⁶ The boundary between the two tribes was roughly the height of land separating the waters that flow into the St. John River from those that enter the Gulf of St. Lawrence. The territory of the Malecite, however, stretched beyond the drainage basin of the St. John River to the shore of the St. Lawrence opposite Tadoussac, including part of the State of Maine. They joined with several Algonkian tribes to the south to form a loose confederacy known as the

61. I.B.I.D. p. 268.

62. I.B.I.D. p. 268.

63. I.B.I.D. p. 269.

64. I.B.I.D. p. 269.

65. I.B.I.D. p. 270.

66. I.B.I.D. p. 270.

Abenaki (Eastern) Confederacy, which supported the French against the English colonists of New England and the League of the Iroquois. Like the Micmacs, the Malecite intermarried freely with the white settlers so that today their people have a strong infusion of white blood. ⁶⁷

B - The Iroquoian People

1 - The Hurons:

The confederacy of the Hurons (old French "Huron": a bristly, unkept knave) consisted of four separate tribes, the Bear, the Cord, the Rock, and the Deer, together with a few smaller communities that united with them at different times for protection against the Iroquois. ⁶⁸ The real name of this Huron confederacy was "Wendat" (Dwellers on a Peninsula) from which the term "Wyandot" subsequently came to be applied to the mixed remnants of both the Hurons and the Tobacco peoples. ⁶⁹ When Champlain visited their country in 1615, the Hurons occupied 18 villages situated within a few miles of each other. Settlement in one place lasted no longer than from 12 - 20 years due to the depletion of the fuel supply and exhaustion of the unfertilized soil. ⁷⁰

The Hurons maintained a firm friendship with the Algonkians to the north and east, in fact they often gathered berries along the northeastern shores of Georgian Bay in territory nominally controlled by the Ojibwa. ⁷¹ The only enemies of the Hurons at the time of Champlain's arrival were the Iroquois peoples south of the St. Lawrence River. ⁷²

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67. I.B.I.D. p. 270.
68. I.B.I.D. p. 289.
69. I.B.I.D. p. 290.
70. I.B.I.D. p. 290.
71. I.B.I.D. p. 296.
72. I.B.I.D. p. 297.

The struggle between the two confederacies might have continued indefinitely if the Iroquois had not obtained from the Dutch a far larger supply of firearms and ammunition than the Hurons could obtain from the French. In 1648, with the Hurons already weakened by smallpox, the Iroquois launched a determined assault upon Huronia. After shattering the Hurons, the Iroquois turned on the Tobaccos, Neutrals and Eries, destroying most of their villages. ⁷³

After the Iroquois campaigns the Huron survivors scattered far and wide. Some fled to what is now the United States, others went to Christian and Manitoulin Islands and some were given sanctuary by the French at Lorette near Quebec City.

2 - The Tobacco Nation and Neutrals:

The Tobacco people, or "Tionontati"("There the mountain stands"), and the Neutrals, were in all their customs hardly distinguishable from the Hurons. ⁷⁴ The Tobacco nation was not as numerous as the Neutral, having only nine villages (in 1640) to the latter's 28 (in 1626). ⁷⁵ They had very little direct contact with Europeans, for the Hurons, fearful of losing their trade as middlemen with the French would not allow any passage through their territories to the Ottawa River.

3 - The Iroquois:

Until the early eighteenth century the Iroquois Confederacy consisted of five nations: the Mohawk ("Man-Eaters"); the Oneida ("A rock set up and Standing"); the Onondaga ("On the hill or mountain"); the Cayuga ("Where locusts were taken out"), and the Seneca. ⁷⁶ Later in 1714, the Tuscarora from the Carolinas were admitted as the sixth member of the Iroquois confederacy.

73. I.B.I.D. p. 36.

74. I.B.I.D. p. 300.

75. I.B.I.D. p. 300.

76. I.B.I.D. p. 300.

The largest tribe among the Iroquois was the Seneca, the most aggressive, the Mohawk. ⁷⁷ Being the two flank members, they often encountered different enemies, and owing to the loose organization of the confederacy were forced to act independently. So it was the Seneca who were chiefly responsible for the destruction of the Huron, Tobacco, and Neutral Nations - the Mohawk who harassed the Algonkins and Montagnais north of the St. Lawrence, and the Abenaki and other Algonkian tribes in the Maritimes, New Hampshire and Maine. The Oneida, Onondaga and Cayuga generally provided volunteers for any major operation, but complications often arose when one tribe in the confederacy concluded a peace which others ignored or refused to accept. ⁷⁸ Thus in the seventeenth century the French concluded a truce with the Mohawk, only to find themselves assailed by groups of Onondaga or Seneca.

The Iroquois Confederacy was strengthened by the wholesale adoption of captives (including Europeans) and in the case of the Mohawk component, the acquisition of firearms from the Dutch. The French ultimately failed to win the friendship of the League, though they did manage to persuade some Onondaga and Mohawk to accept Catholicism and move to settlements at Oka, St. Regis and Caughnawaga.

At no period in history were the Iroquois a numerous people. Estimates have been made that at the coming of the Europeans their total population was only 16,000, distributed among the tribes as follows: Mohawk, 3,000; Oneida, 1,000; Onondaga, 3,000; Cayuga, 2,000; and Seneca, 7,000. ⁷⁹ From 1642 to the close of the seventeenth century the league suffered tremendous losses through wars, diseases, and defection to French Canada, losses that were only partly repaired by the continuous adoption of captives. In 1668, indeed, Huron and Algonkian ex-captives made up two-thirds of the Oneida tribe; and about the same time the

77. I.B.I.D. p. 300.

78. I.B.I.D. p. 304.

79. I.B.I.D. p. 306.

Seneca became a mixture of Neutral, Erie, and Conestoga.⁸⁰ In the 1700's all five tribes absorbed appreciable numbers of Europeans, and ever since, the two major stocks have slowly intermingled. Consequently though the number of "Iroquois" living on reserves in Canada and the United States to-day approximates 16,000, very few of them, if any, can lay claim to pure Indian descent.⁸¹

5. British and French Relations with the Indians

To a great extent, differences in the British and French approach to the Indian were the direct result of differences in the religious, commercial and settlement frontiers of their respective colonies.

From the earliest beginnings, New France was essentially a fur trade outpost, a character which she was not to lose until many decades after the Conquest. The entire French experience along the St. Lawrence from 1534-1760 was built upon the fur trade, a fact which ultimately influenced the colony's pattern of settlement - small scattered settlements along the St. Lawrence River with scattered outposts in the interior. Very early, Champlain realized that in order for the colony to succeed financially, the Indian inhabitants would have to be enlisted as middlemen. In a way it was unfortunate for New France that Champlain chose the northern tribes of Algonkin and Huron to fulfill this requirement, for by choosing them he allied New France against the Dutch-supported and later British-backed Iroquois.⁸² Thus a commercial alliance became a military alliance, and one which kept New France on the defensive for most of the eighteenth century.⁸³ To the French in Canada the Indian soon became a purveyor of raw furs, a backwoods fighter of great skill and a soul to be saved. He thus became an object of interest to trader, governor and missionary alike.⁸⁴

80. I.B.I.D. p. 306.

81. I.B.I.D. p. 306.

82. Eccles, W.J. The Canadian frontier 1534-1763 (Toronto), Holt, Rinehart and Winston, 1969, p. 24.

83. I.B.I.D. p. 32.

84. I.B.I.D. p. 34.

The attitude of the English towards the Indian was quite different from that of the French. Neither economically nor religiously was the native an object for solicitation. The Indian tribe, while important to the Anglo-American colonies, was never, as in Canada, the very life-line of economic development. Nor did the Puritan, like the Jesuit, look upon the Indian as a soul to be saved. He was, instead, a Canaanite, an enemy of God's chosen people, to be humbled or struck down in accordance with the instruction of Jehovah. There were exceptions to this uncompromising attitude, like that of Roger Williams; there were missions for the Indians; but few Protestant missionaries, save the German Moravians, went out into the wilderness. Owing to this indifference and hostility towards the aboriginal peoples, the history of the Anglo-American frontier was one of wars, massacres and exterminations. 85

Growing out of the very basic economic differences between the Thirteen Colonies and New France, came the varied nature and character of settlement. The expansion of New France was not like the Thirteen Colonies. The French, due to the nature of the fur trade and its religious dimension settled in a narrow belt along the St. Lawrence. The main settlements of Montreal, Three Rivers and Quebec were meant to guard the St. Lawrence water route and provide centres for the Indian middlemen to bring their furs. Essentially then, French expansion was more like a metropolis with influence extending into the interior regions through clerics, voyageurs and coureur de bois. 86

On the other hand, the expansion of the Thirteen Colonies was more like a tidal wave with settlers travelling up rivers and valleys to the interior. The fact is that through a more diversified economy and the lack of religious qualification, the population of the Thirteen Colonies quickly exceeded that of New France. In short, the French adapted their commercial enterprise to the wilderness, while the Thirteen

85. Stanley, G.F.G. "The Indian Background of Canadian History", Can. Hist. Assoc. Annual Report (1951-52), p. 17.

86. Eccles, W.J. The Canadian Frontier. p. 6

Colonies attacked the wilderness in order to advance their economy and civilization.

This very basic difference in the character of French and English settlement profoundly affected their relations with the Indian people. To the French the Indian became a problem and a burden. At once he was a commercial and military ally, and yet still he remained an object of suspicion and mistrust. He was the key to the winning of the continent, an integral part of a commercial empire, yet he remained a "foreign" element within the colony, the object of a policy of "francisation". The one interest which the state retained in the Indian was purely military - the maintenance of the native alliances and the exploitation of the Indians as armed auxiliaries for the defence of Canada.⁸⁷ It was far cheaper to hold the friendship of the Indian with a few gifts of blankets, powder, lead and vermillion war-paint than to maintain a large standing army on the frontier of New France.⁸⁸

The policy of "francisation" was essentially a dual policy of education and assimilation put into effect by Talon and Frontenac. But neither governor nor Intendent had any real appreciation of the nature of the Indian.⁸⁹ They had no real interest in the Indian person, except insofar as he contributed to the material wealth of the colony by trading furs, or to the defence of the colony by participating in Frontenac's war parties. The governor might take several Indian children into his own household; he might belabour the Jesuits for their unwillingness to carry out the king's wishes regarding "francisation;" but from 1679 it is clear from his own correspondence that he, no less than the Jesuits, had begun to realize the futility of inter-marriage or of educating a few Indians in French schools.⁹⁰ In the Jesuit

87. Stanley, G.F.G. "The Indian Background of Canadian History." p. 17.

88. Eccles, W.J. The Canadian Frontier. p. 17.

89. Stanley, G.F.G. "The Indian Background of Canadian History." p. 16.

90. I.B.I.D. p. 16.

Relation of 1642 Father Vimont stated that the Jesuits had given up the idea of teaching young Indians in Seminaries "for good reasons, and especially because no notable fruit was seen among the Savages." 91

Unlike the British, the French became more involved with the Indian and his inter-tribal conflicts, due in part to the fur trade and also the influence of the clerics. But the French colony, due to its centralized form of government, was in a better position to deal directly with the Indians than were the various administrations of the British colonies. As W.R. Jacobs has noted:

"The French, thanks to a centralized government, could boast of a unified system of giving presents. The British, on the other hand, were hampered by conflicting colonial and imperial authority in the handing out of large subsidies to the Indians." 92

Indeed, Jacobs sees British policy:

"At no time...(being) ... consistent ..., The main consideration seems to have been centred around giving as many presents as possible, thus insuring British trade and westward expansion at the expense of the French." 93

This brings up the interesting position of the Indian within the English community.

"From the British point of view, the Iroquois were the subject allies of Great Britain, although the British were never in a position to impose their will on these independent people until the end of the French and Indian war." 94

To the English the Indian was a pawn in the balance of power - fur purveyor, and an ally who could be bought. He was also a threat to colonial expansion and an element which had to be kept subdued at any cost or by any method.

91. I.B.I.D. p. 15.

92. Jacobs, W.R. Wilderness Politics and Indian Gifts. The Northern Colonial Frontier, 1748-1763, (1950). University of Nebraska, p. 12.

93. I.B.I.D. p. 56.

94. I.B.I.D. p. 87.

The French attitude was tempered by the religious element and the requirements of the fur trade. Essentially, the French sought to maintain the loyalty of the tribes allied to them commercially, while maintaining at least the uneasy neutrality of the Iroquois.⁹⁵ On the other hand the English, sought to induce the confederacy to take up arms against the French.

"...in the minds of the Indians, who recognized their position as a balance of power, friendship could be bought only through a favourable exchange in trade presents or military successes."⁹⁶

Thus, as the British and French intensified their struggle for the continent the position of the Indian changed from one of fur purveyor to that of military ally. Despite peace treaties in 1667 and 1701 the French were unable to win the total support of the Iroquois. Indeed in the 1701 treaty, the French requested the neutrality of the Iroquois in case of war between Britain and France.⁹⁷ This was the best for which they could hope.

The French position with regard to the Indian continued to decline in the first two decades of the eighteenth century. Between 1700-1714 the price paid the Indians for their beaver pelts at French trading posts depreciated, due in large measure to a glut on the French market.⁹⁸ At the same time, the Iroquois Confederacy ravaged by small-pox and war began to reduce in numbers. The importance of this reduction in population can only be seen when one considers the policy of the Iroquois after 1701. As D.E. Leach, The Northern Colonial Frontier 1607-1763, has noted, the 1701 Treaty

"...marks a definite turning point in Iroquois policy, the beginning of a strategy consisting largely of an attempt to play the English and the French off against each other, with a view to preventing either from becoming dominant."⁹⁹

95. I.B.I.D. p. 27.

96. I.B.I.D. p. 87.

97. Eccles, W.J. The Canadian Frontier. p. 130.

98. I.B.I.D. p. 61.

99. Leach, D.E. The Northern Colonial Frontier 1607-1763. p. 117.

However, with their reduction in population and depreciation in the French price for beaver pelts, the Iroquois were unable to prevent the other tribes -- the Ottawa, Huron and Miami, from taking their trade direct to Albany. ¹⁰⁰ As the western tribes drew closer to the English, so did the Iroquois.

On 19 July, 1701, the sachems of the Five Nations surrendered their beaver hunting-grounds to the British Crown in return for protection against their enemies. The ceded lands (about 320,000 square miles) ranged from north of Lake Ontario, to present day Chicago and were all within New France. A confirmatory surrender was drawn up on September 14, 1726, again at Albany, between Governor Burnet and the chiefs of the Onondaga, Cayuga, and Seneca Nations. At the same time, these same three nations of Indians granted to the British Crown a strip of country sixty miles wide south of Lakes Erie and Ontario, extending from Oswego to the Cuyahoga River, where Cleveland now stands. ¹⁰¹

The Iroquois, who throughout the seventeenth century, had tried to become sole middlemen in the fur trade, had now, to a great degree, lost their power of independent action.

The Treaty of Utrecht (1713) recognized the new power realities vis a vis the Indian tribes in America. By Article XV, France recognized British "dominion" over the Iroquois and commerce with the western Indians was declared open to traders of both countries.

"The language of this treaty declared the "Five Nations" were subject to the dominion of England." The interpretation of this clause was the occasion for diplomatic fence at once. The French claimed a distinction between subjectivity of the Indians and domination over their lands. The English insisted that the allegiance of the Five Nations carried not only their own hereditary territory, but also the regions of Iroquois conquests, namely, all west of the Ottawa River and the Alleghany Mountains to the Mississippi River." ¹⁰²

100. Eccles, W.J. The Canadian Frontier, p. 135.

101. O'Callaghan E. Documents relative to the Colonial History of the State of New York. (Albany). Weed, Parson & Son; 1854; Vol. IV, p. 908, Vol. 11, p. 800.

102. Winsor, J. Narrative and Critical History of America, Vol. V. Houghton, Mifflin Co. 1887, p. 484.

Perhaps the French were a bit premature in allowing Britain equal access to the Indian tribes of the west, (Illinois country) for by 1720 the price of beaver had once again climbed. With the return of the beaver pelt to a high value on the French market, the tribes who had switched to Albany began to look once again to New France. A direct clash between Anglo-American settlement and the French military fur trade frontier suddenly became a distinct possibility. ¹⁰³

The French tried to convince the Indians of the Ohio River valley that the advancing British settlements were a threat to the native way of life. ¹⁰⁴ In 1716 a road had been opened over the Blue Ridge Mountains from Virginia. In 1718 Governor Keith of Pennsylvania reported to the Board of Trade on the advances of the French in the Ohio Valley. In 1721, the English began to settle colonists on the Oswego River. By 1726, they had completed a fort at Oswego, and Montreal found its trade with the west cut off. ¹⁰⁵

The French persisted in seeking conferences with the Six Nations, as was the French practice since the Tuscaroras joined the Six Nations in 1713. In 1734 French negotiators met with the Onondagas, and in 1737 with the Seneca seeking permission to build a post at Irondequot, further west on Lake Ontario than Oswego. The Iroquois refused. ¹⁰⁶

The English also took every possible occasion to summon new conferences with the Iroquois. The purpose of these conferences was to allay Indian suspicion of British expansion on the Ohio and to effectively quell Indian unrest initiated by French rumours. The most important of these conferences was held at Lancaster Pennsylvania in 1744, when an indefinite extent of territory beyond the Alleghanies was ceded to the English by the Iroquois in the form of a confirmation of earlier

103. Eccles, W.J. The Canadian Frontier. p. 156.

104. I.B.I.D. p. 158.

105. Winsor, J. Narrative and Critical History of America, p. 485.

106. I.B.I.D. p. 487.

implied grants. ¹⁰⁷

In 1748, the French, acting through Father Picquet, made renewed efforts to enlist Iroquois converts, while Galissoniere urged the home government to send over colonials to occupy the Ohio Valley. ¹⁰⁸ A number of Virginians, in an effort to counter the French, formed themselves into the Ohio Co. and began to explore the disputed valley. In order to anticipate the English, the French governor had already dispatched Celeron de Bienville to take formal possession of the valley by burying lead plates of claim. The Ohio Indians, upset by Celeron's plates, turned to the Iroquois, who in turn looked to New York for support.

With the Indians looking to the individual colonies for support, the colonial governments seized the opportunity to occupy Indian lands. On 13 June 1752, at Logstown, Virginia received permission from the Six Nations to erect a fort at the forks of the Ohio River. In addition, the Ohio Co. (of which Gov. Dinwiddie of Virginia was a member) acquired a vast tract of Indian hunting grounds. ¹⁰⁹ This indiscriminant practice of taking Indian lands, sending in unscrupulous traders and preparing the land for settlement alarmed the Indians, who had previously turned to the British. Indeed, it seemed probable that if the separate and uncoordinated colonial policies continued, the British would force the Six Nations into the arms of the French.

Soon the British home government began to realize the inadequacies of the colonial system in coping with defence and Indian affairs. In 1754 the Board of Trade proposed the appointment of a single authority to direct Indian Affairs. ¹¹⁰ The first management of Indian Affairs reflected its military character, the Commander of the Forces had primary control, with the officers at the various posts acting as

107. Winsor J. Narrative and Critical History of America. p. 487.

108. I.B.I.D. p. 489.

109. Jacobs, W.R. Wilderness Politics and Indian Gifts. p. 120.

110. Indian Affairs Annual Report (1921), p. 8.

Superintendents or Agents. On 15 April, 1755 Sir William Johnson was appointed Indian Superintendent*by General Braddock under authority of George II, with the rank of Major General. In May 1755, Edmund Atkin, the Indian Superintendent for the Southern Department reported to the Board of Trade, condemning the management of Indian Affairs as practiced by the separate colonies.¹¹¹ Some colonies had no regulations for conducting the Indian trade, and such legislation as did exist, often conflicted with the statutes of other colonies. Atkin predicted that the colonies could not cooperate to develop a uniform system for the regulation of the Indian traffic due to their varied interests and circumstances, nor would they ever agree on a common fund to pay for the general service. Consequently he recommended that Parliament establish general regulations applicable to all the colonies and appoint officials to execute such common rules.¹¹² Three years later, in October 1758, the Ohio Iroquois and nine other nations received assurance from Pennsylvania (Treaty of Easton) that Pennsylvania did not covet Indian lands for settlements.¹¹³ The policy which was beginning to form had as its logical conclusion the Proclamation of 1763. As W.J. Eccles has noted:

"After the conquest the British found themselves obliged to adopt the old western policy of the French. They now sought to bar west of the Alleghenies to settlement by the Anglo-American frontiersmen and to preserve the Indian fur trade frontier.¹¹⁴

In the final analysis, the British were able to hold the allegiance of most Indians in the Old North West due to three factors: first, the British provided more presents of friendship; second, in the last years of the 1750's they won more battles over the French; third, Sir William Johnson and the fledgling Indian Department were able to add a degree of consistency and coordination to the Indian policies of the various colonial governments.

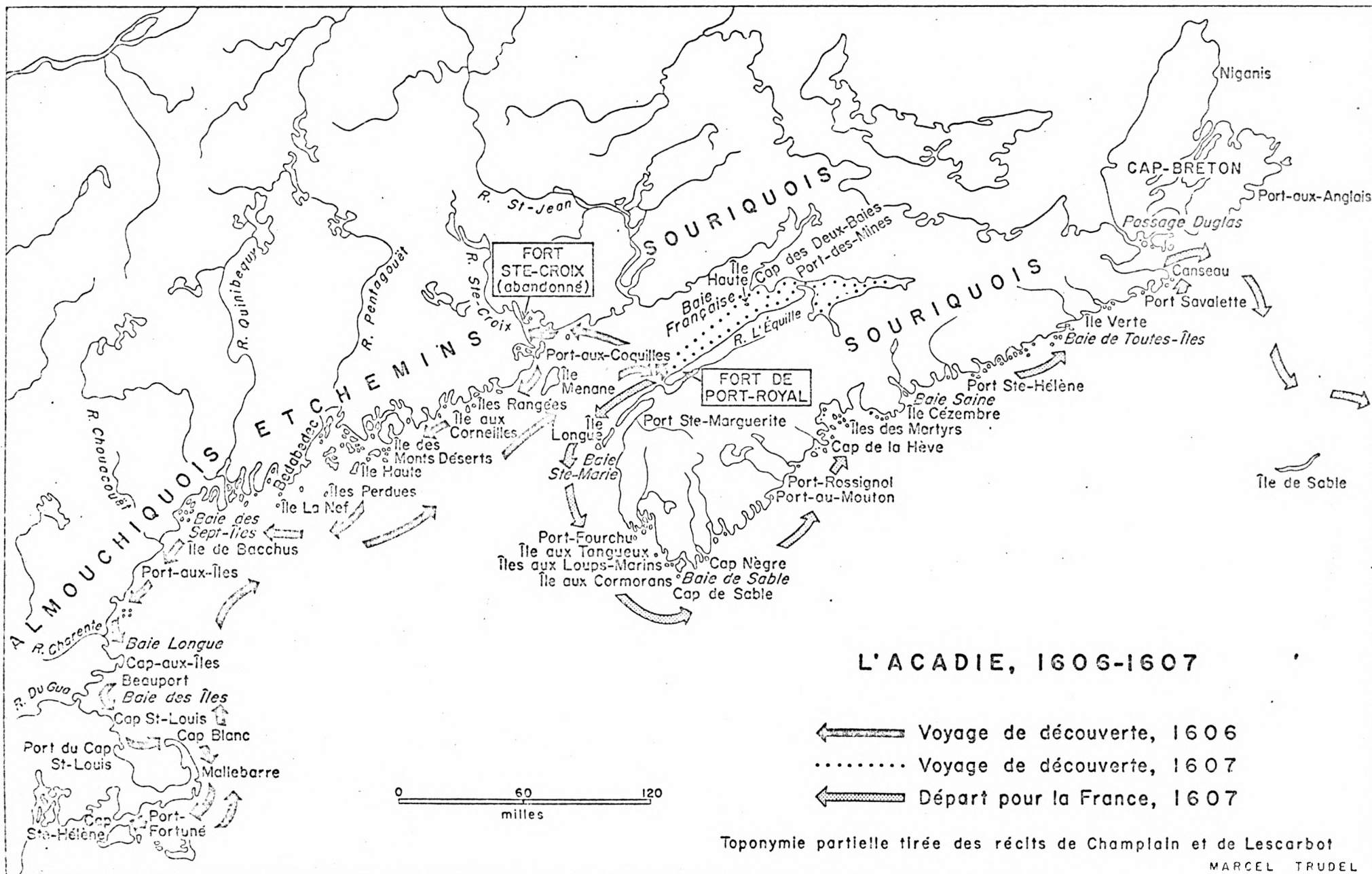
111. Sosin, J. Whitchall and Wilderness. University of Nebraska Press, (1961) p. 30.

112. I.B.I.D. p. 30.

113. Eccles, W.J. The Canadian Frontier, p. 179.

114. I.B.I.D. p. 11.

* Northern Department.



In Whitchall and Wilderness, J.M. Sosin has noted that during the Seven Years War:

"...royal officials in America ... had instituted those elements of the Proclamation of 1763 which related to the American wilderness, - military occupation of the west, a reservation for the tribes, and regulated Indian trade." 115

In December 1758, Colonel Henry Bouquet, commandant at Fort Pitt, pledged to a gathering of Ohio Indians, that the English did not mean to deprive the Indians of their hunting grounds. 116 A year later, Thomas Cresap of Maryland, acting for the Ohio Company of Virginia, approached Colonel Bouquet with an offer - 250,000 acres of company land in return for Bouquet's services in procuring German and Swiss settlers. 117 However, Bouquet remembered the Treaty of Easton (1758) and his pledge in December of that year, to the Indian tribes, and interpreted these to mean no settlement on the Ohio until the Indians consented. Two years later, in October 1761, Bouquet issued a proclamation prohibiting entry or settlement on the Ohio, unless a trader or settler could show written permission from the Colonial governor or commander-in-chief. 118 In New York State, the British Board of Trade sanctioned further grants of land "provided such settlements do not interfere with the claims of our Indian Allies..." 119 On 11 November 1761, the Board of Trade issued a report on the situation in the Mohawk Valley terming it:

"...dangerous to (the) Security of the colonies. In the past, the Indians had taken up arms against the colonists. The primary causes for their disafection were the violations of treaties guaranteeing the tribes their hunting grounds."

On 3 December 1761, the Board of trade stated:

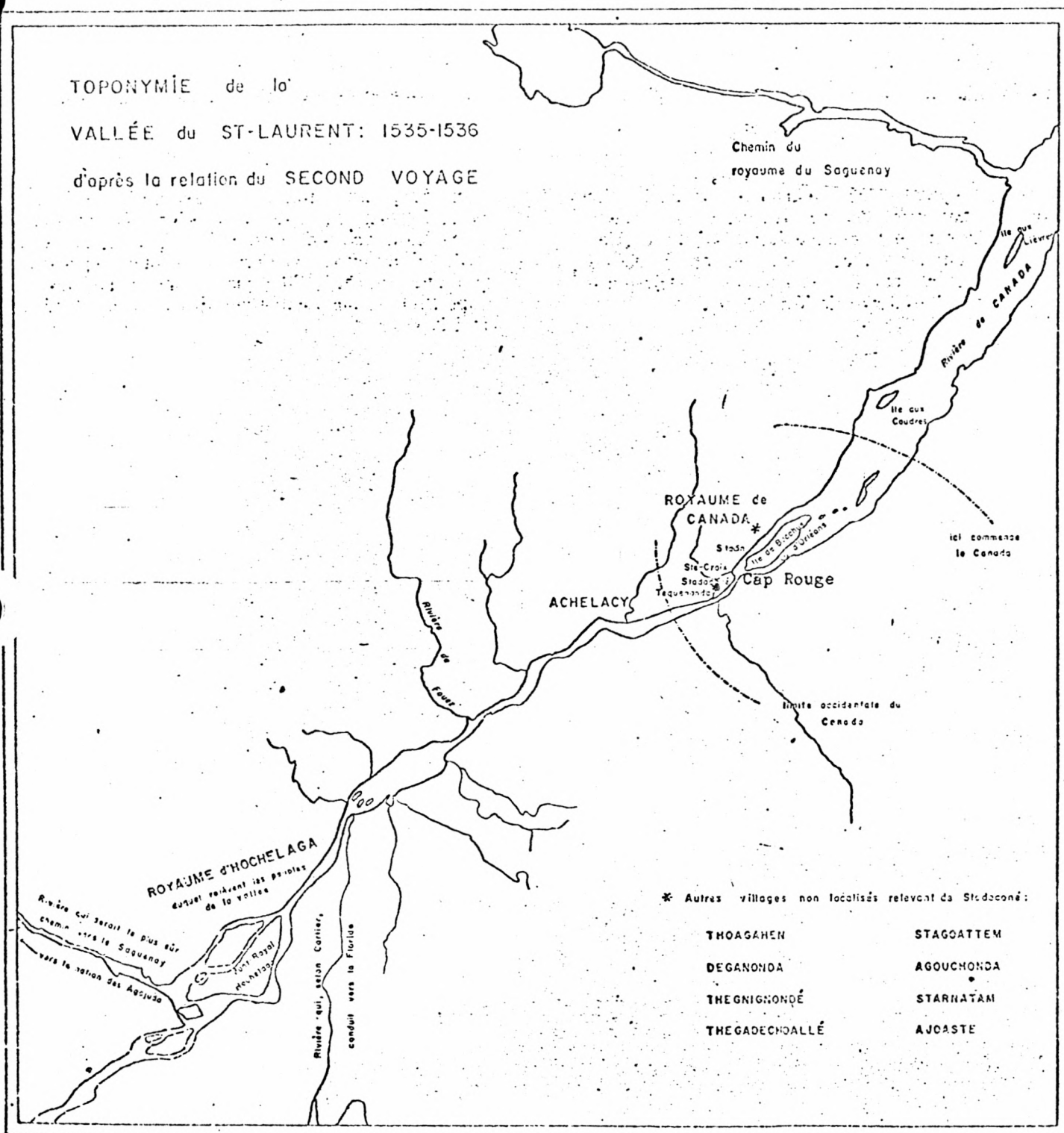
"For the future, the governors must refer all applications for Indian lands to the Board of Trade." 120

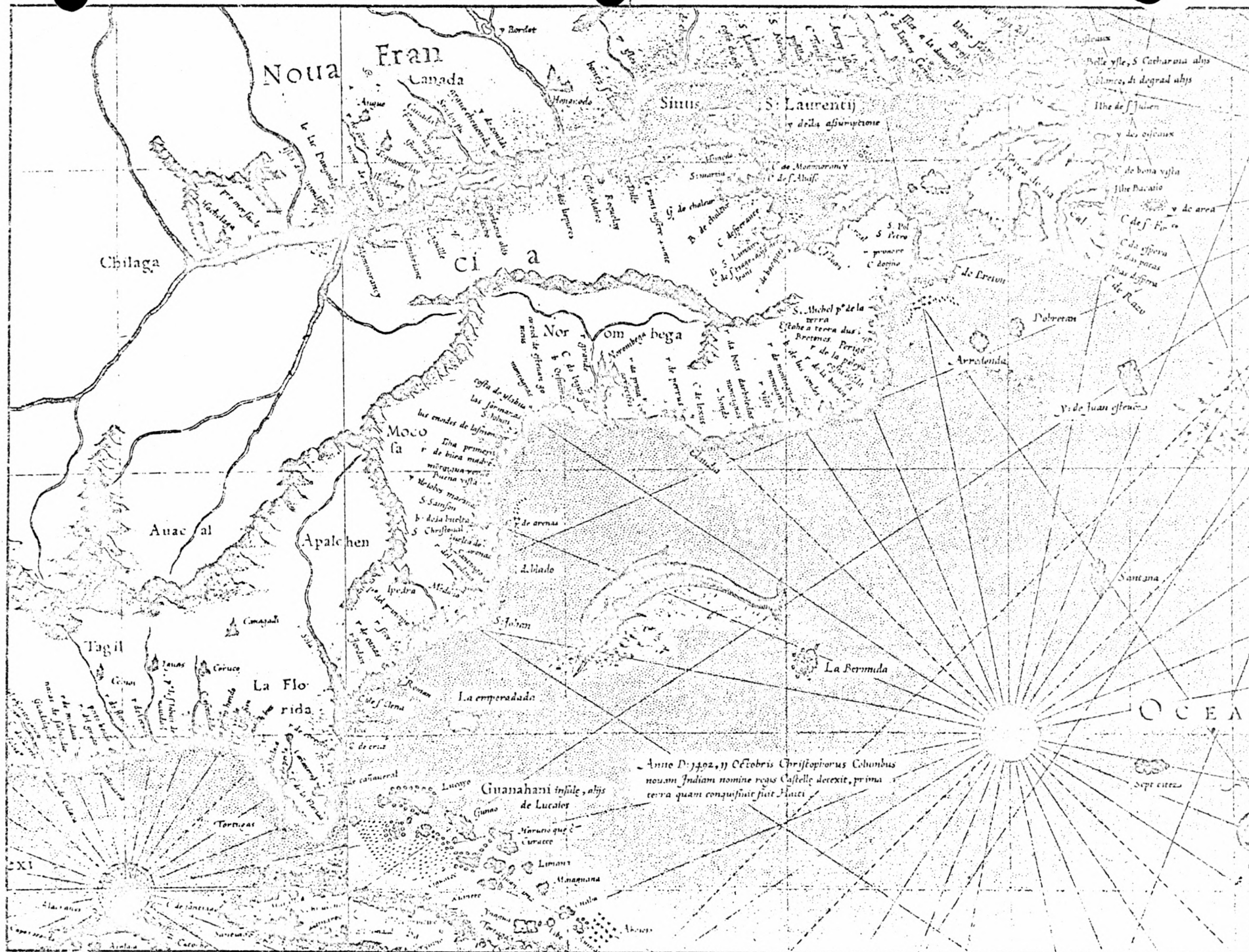
Indeed, the colonial situation was now ripe for legal sanction to be given the ad hoc policies implemented by the various colonial governments during the previous years.

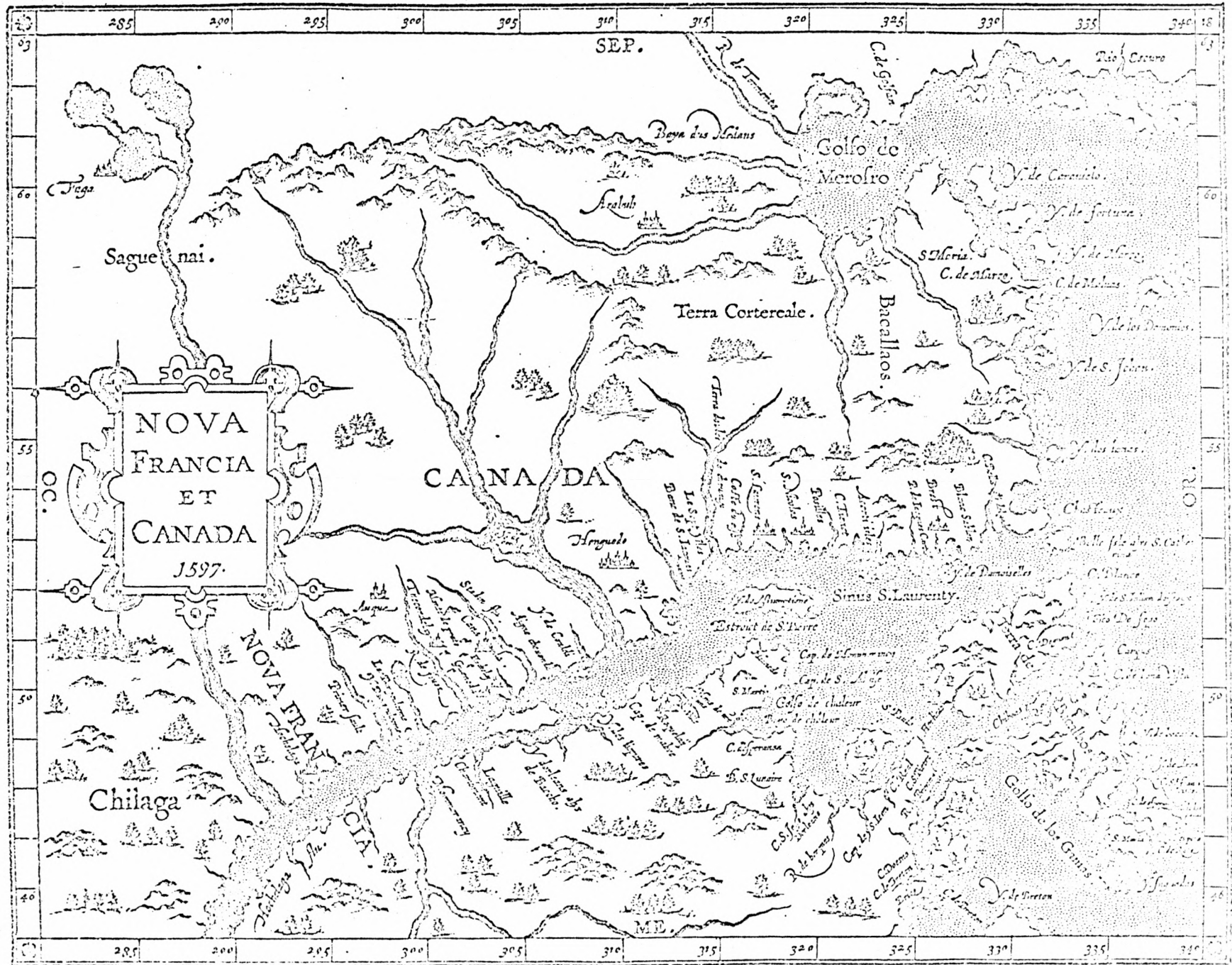
115. I.B.I.D. p. 78.
116. I.B.I.D. p. 32.
117. I.B.I.D. p. 42.

118. I.B.I.D. p. 43.
119. I.B.I.D. p. 47.
120. I.B.I.D. p. 48.

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VALLÉE du ST-LAURENT: 1535-1536
d'après la relation du SECOND VOYAGE

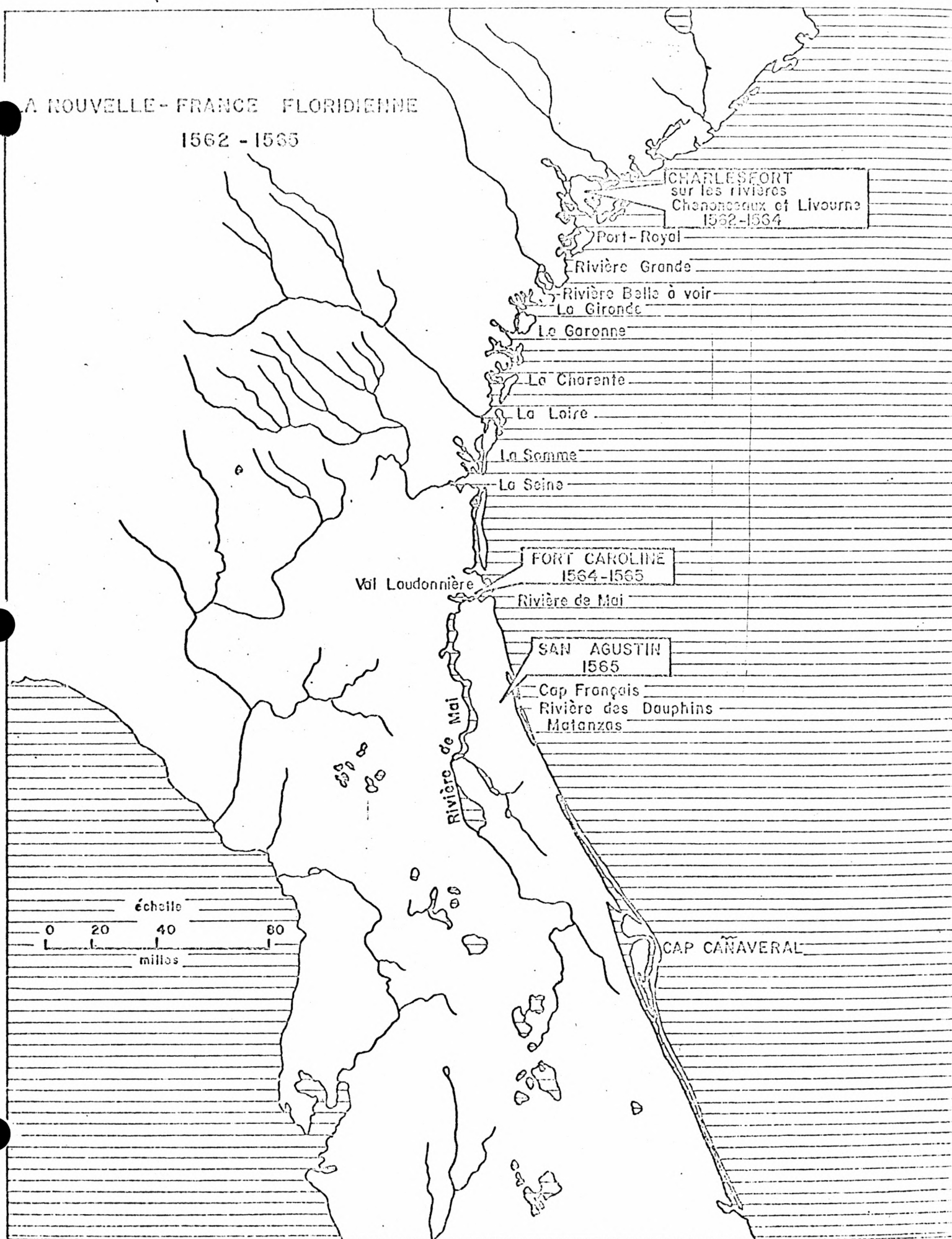




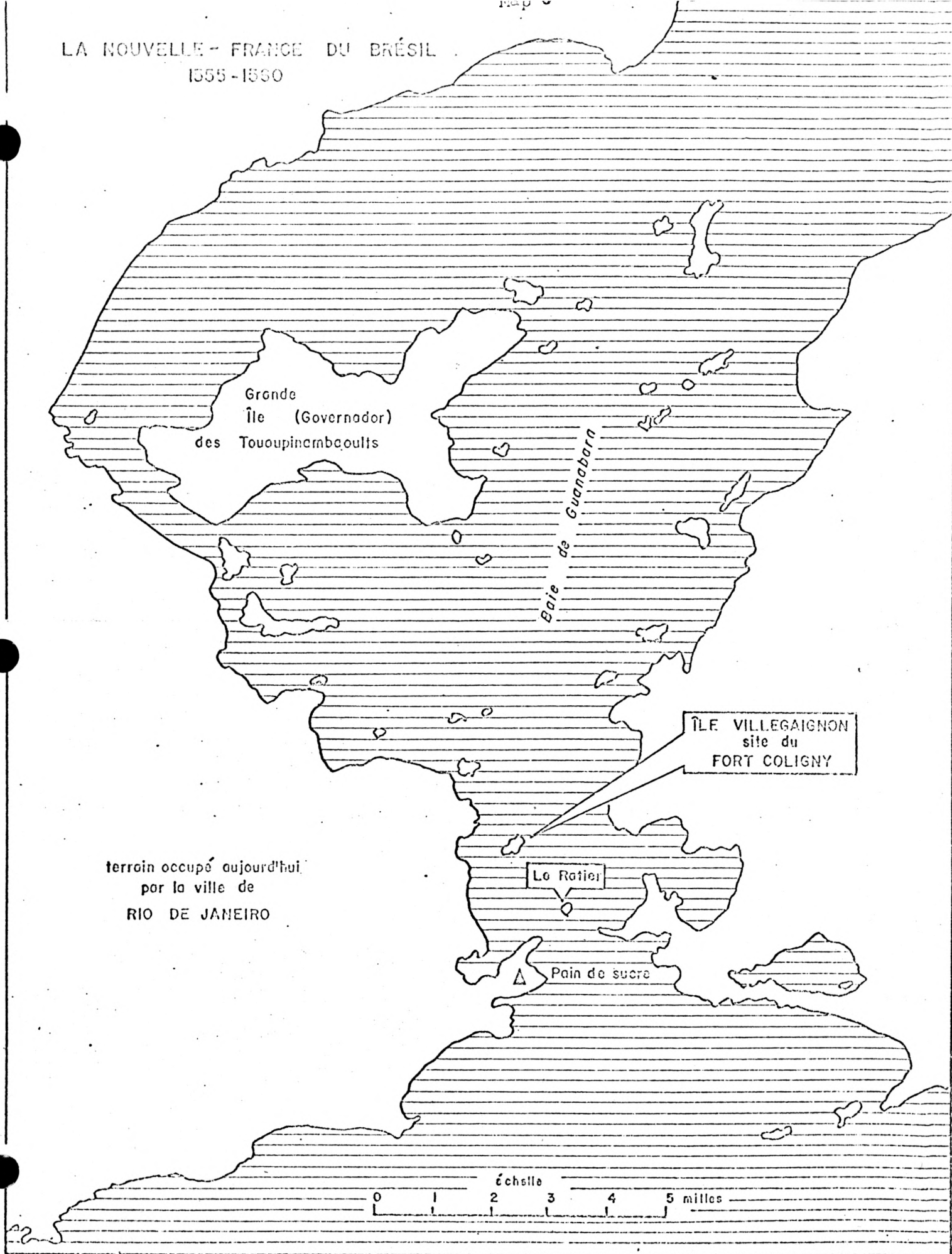


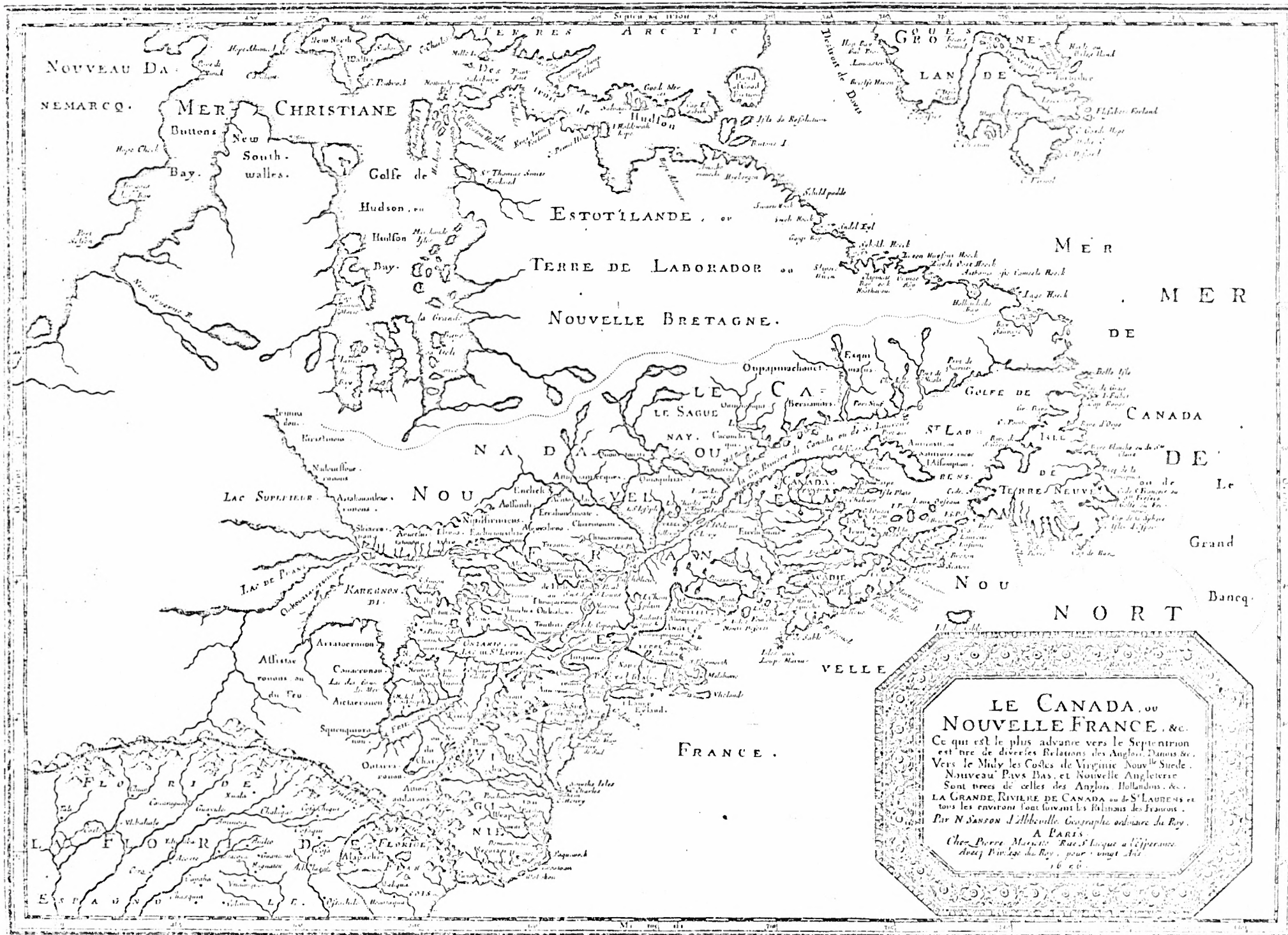
LA NOUVELLE-FRANCE FLORIDIENNE

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LA NOUVELLE - FRANCE DU BRÉSIL
1555-1560





Documentation Section
Canadian Citizenship Branch

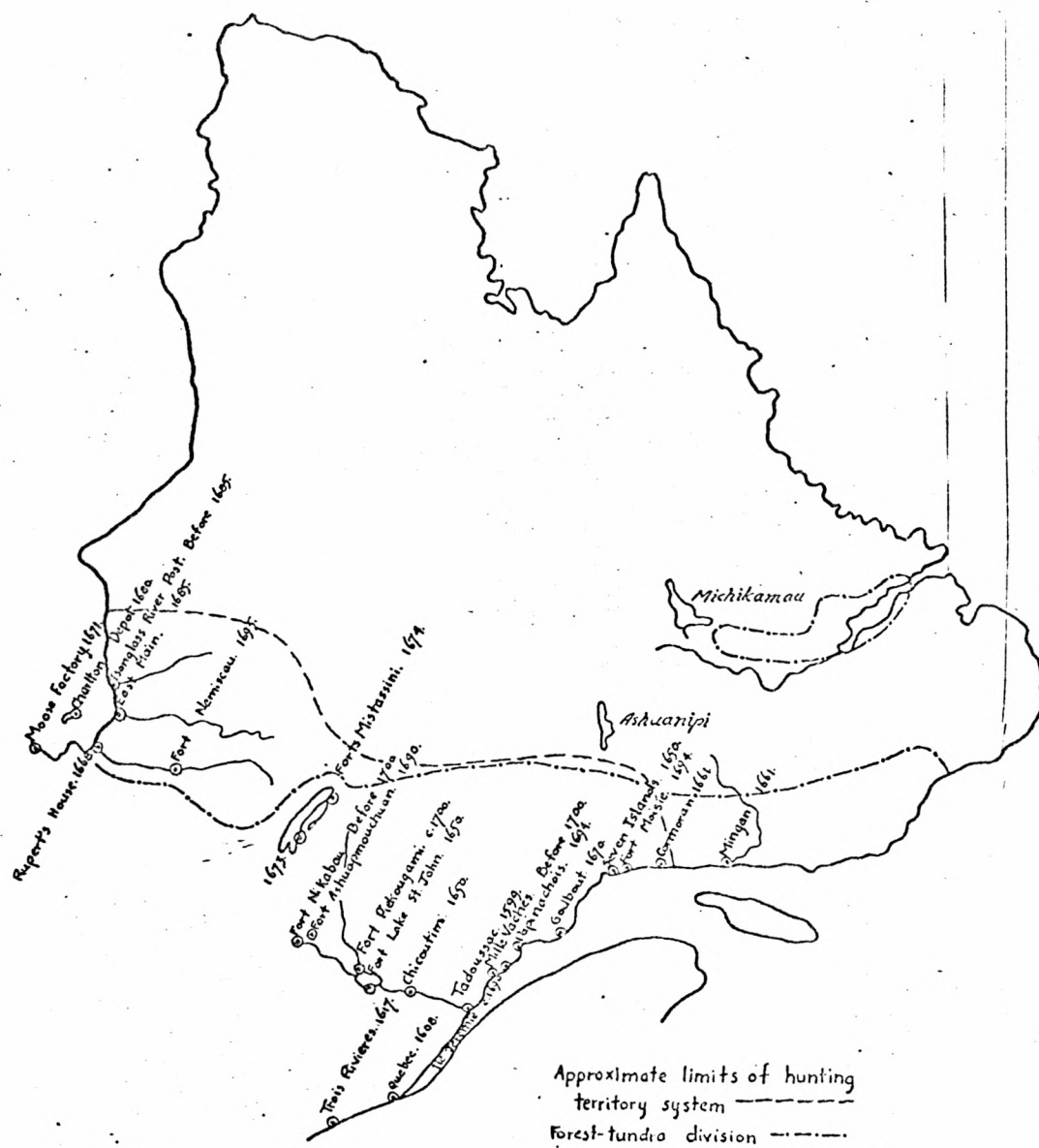
MAP I



Montagnais-Naskapi Bands of the Labrador Peninsula in the 1920's
(Speck 1931)

From: The Montagnais "Hunting Territory" and the Fur Trade,
Eleanor Leacock

MAP II

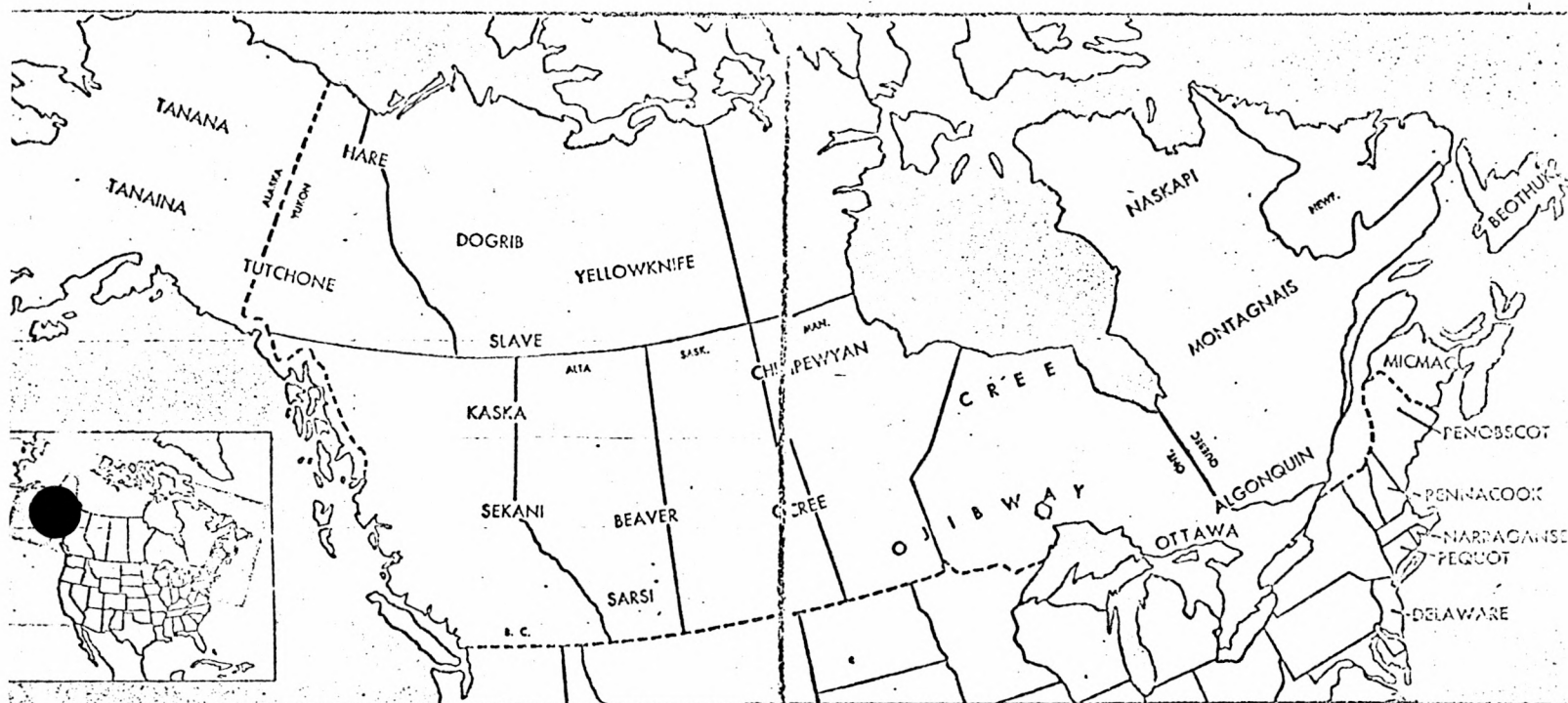


Trading Posts and Forts of the Labrador Peninsula in Operation before 1700 (Voorhis 1930; Hare 1950: 617)

From: The Montagnais "Hunting Territory" and the Fur Trade,

Eleanor Leacock

Indian Groups of the Sub-Arctic



FROM: P. Farb. Man's Rise to Civilization, p. 80

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PART II

THE APPLICATION IN BRITISH NORTH AMERICA
OF THE ROYAL PROCLAMATION, 1763 - 1774

LA

Part II

Treaties, March 1971.

PART II

THE APPLICATION IN BRITISH NORTH AMERICA OF THE ROYAL PROCLAMATION, 1763 - 1774

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Application in British America of the Royal Proclamation (1763)

1. Indian land policies up to the Royal Proclamation

As British settlement in the Thirteen Colonies advanced inland, the Indian tribes withdrew west of the Appalachians. The land-hunger of the English settlers in the middle decades of the 1800's threatened to alienate the Indians of the Ohio and Mohawk River valleys to such an extent that their continued allegiance to the British during the Seven Years War (1753-1760) was placed in jeopardy.

Various reasons for this Indian dissatisfaction were advanced by colonial officials. Lieutenant Governor Dinwiddie of Virginia informed the Board of Trade in February, 1756, that the malpractices of English traders were chiefly responsible for the desertion of the Indian tribes from the British interest. He suggested that Parliament levy a poll tax to manage Indian affairs.¹ Governor Shirley of Massachusetts in 1756 proposed imperial regulation of the Indian trade² and George Washington, commanding a Virginia regiment, suggested a general system so that the rules of one colony would not undermine the regulations of the others.³ Sir William Johnson, Indian Superintendent for the Northern District, urged that the superintendents under the authority of the Crown should direct Indian affairs.⁴

A major point of discontent among the Indian people arose from the fraudulent purchases of their lands by the white settlers. Indeed William Johnson frequently urged the imperial government to redress the grievances of the tribes over the large grants of land made by colonial governments.⁵ He warned that these acts were driving the Indians into the arms of the French. In response to these arguments, the Commissioners of Trade in November 1757, admitted to the Governor of South Carolina that:

1. Sosin, J.M. Whitehall and Wilderness (Lincoln) University of Nebraska Press 1961. p. 30.

2. I.B.I.D. p. 30.

3. I.B.I.D. p. 30.

4. I.B.I.D. p. 30.

5. O'Callaghan, Edmund B. (ed.), Documents relative to the Colonial History of the State of New York, vol. VII, p. 377.

"... the only effectual method of conducting Indian affairs will be to establish one general system under the sole direction of the Crown and its officers ..."⁶

However, while the Seven years War was in progress in North America, the imperial government took no step to impose an all embracing policy.

During the war (referred to by American historians as the French and Indian War) the British government fostered policies on the western frontier which were formalized by the provisions of the Royal Proclamation. The refusal by Colonel Bouquet in 1758 to permit settlement in the Ohio Valley reflected the British government's desire to restrict settlement on lands claimed by their Indian allies. In October 1761 Bouquet issued a proclamation* prohibiting settlement in the Ohio Valley. The Proclamation had the twofold effect of placing a curb on the Indian trade and restricting settlement in "Indian territory". Only by reassuring the Indians of continued possession of their lands could the British maintain peace and stability on the colonial frontier. The scattered garrisons at Forts Pitt, Detroit, Michilimackinac and Vincennes provided little military power and influence.

In 1754 Governor Dinwiddie of Virginia had promised 200,000 acres of land for those who volunteered for the French and Indian War.⁷ In December 1759, Governor Fauquier asked the Board if the Crown would renew lands grants on the Ohio. No reply was forthcoming. In March 1760, Fauquier wrote again this time under pressure from

6. Sosin, J.M. Whitehall and Wilderness. p. 31.

7. I.B.I.D. p. 43.

* a proclamation similar to Bouquet's was issued by Lieutenant-Governor Johnathan Belcher (May 1762) on authority of instructions from His Majesty dated 3 December, 1761.
See Appendix C for Proclamation and Royal Instructions.

two land speculators, George Washington and George Mercer.⁸ The Commissioners of Trade replied ordering Fauquier to take no action for settling "any Lands upon the waters of the Ohio, until His Majesty's further pleasure be known."⁹ The Board added that it would be "imprudent in the highest degree" to promote settlement on lands claimed by the Indians. As for New York State the Board felt that further lands could be granted "provided such settlements do not interfere with the Claims of Our Indian Allies..."¹⁰

However, under pressure from General Amherst, Governor Cadwallader Colden encouraged settlers to homestead in the Mohawk Valley. The Mohawk Indians claimed ownership of these lands, and in a report of 11 November 1761, the Board of Trade termed the situation

"... 'Dangerous to (the) Security of the colonies'. In the past, the Indians had taken up arms against the colonists. The primary causes for their dissatisfaction were the violations of treaties guaranteeing the tribes their hunting grounds. Consequently, the practice of granting lands before the claims of the natives had been ascertained was 'a measure of the most dangerous tendency...' "¹¹

On 3 December 1761, the Privy Council issued instructions to the Colonial governors prohibiting settlement on lands "which may interfere with the Indians" bordering on those provinces.* In future, the governors had to refer all applications for Indian lands to the Board of Trade.¹²

By 1762, the Board of Trade was under the direction of Lord Sandys. In that year in response to continued pressure from Virginia the Board prohibited further grants of land on the Ohio. Interestingly, the Board dismissed Virginia's arguments

8. I.B.I.D. p. 44.

9. I.B.I.D. p. 45.

10. I.B.I.D. p. 47.

11. I.B.I.D. p. 48.

12. I.B.I.D. p. 48.

* A copy of these instructions are included in Appendix C.

based on the purchases from the Indians at Lancaster (1744) and Logstown (1752) as agreements "vague and void of precision" made by a "few Indians." 13

In January 1763, the Secretary of State (Egremont) informed General Amherst that the British government was endeavouring to prevent further Indian hostilities and

"...to conciliate...the Indian Nations, by every Act of strict Justice, and by affording them...Protection from any Incroachments on the Lands they have reserved to themselves, for their Hunting Grounds...a Plan, for this desirable End, is actually under Consideration." 14

At this time, the colonial advisor to Egremont was Henry Ellis, Governor of Nova Scotia in absentia. On request from Egremont, Ellis provided him with a document entitled "Hints relative to the Division and Government of the Conquered and newly acquired Countries in America." So great was the influence of Ellis that Francis Maseres, later an agent for the Canadians in London, was convinced that Ellis drew up the 1763 Proclamation. 15 However, as J.M. Sosin has noted, Ellis' ideas only paralleled those already formulated by Egremont. The Board of Trade, under John Pownall was also asked to give an advisory opinion. In May 1763, Pownall presented the Board's report which differed with Egremont's only on the proposed division of Canada into two governments - the Board wanted one government, and they (the Board) were opposed to granting any one province civil jurisdiction over Indian country, as Egremont had suggested. 16 However the deliberations of the British government were overtaken by events on the frontier.

2. Pontiac's War 1763

The most pressing problem in the fall of 1763 was restoring the British alliance with the native peoples, broken by the Indian uprising under Pontiac earlier that year.

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13. I.B.I.D. p. 49.
14. I.B.I.D. p. 51.
15. I.B.I.D. p. 56.
16. I.B.I.D. p. 60.

As long as the Indian people remained hostile, Amherst could make no permanent arrangement for the defence of America. Many reasons were offered for the Indian rebellion. 17

- (a) Lieutenant Governor Fauquier of Virginia maintained that the Indian tribes had revolted in resentment over unauthorized settlements on their lands.
- (b) At Detroit, Major Henry Gladwin was under the impression that disaffected Canadians and French traders inspired the uprising.
- (c) From Montreal, General Gage reported that the French, Canadians, and Spaniards had stirred up the Indian people by circulating rumors that the English planned to deprive the latter of their lands.
- (d) Governor Thomas Boone of South Carolina reported that the native tribes refused to recognize the right of the British to take over Spanish and French holdings which the tribes had never ceded.
- (e) In the north, George Croghan related that the Indian people were complaining that the French had no right "to give away their country...".

In a letter of 1 July 1763, Sir William Johnson informed the Lords of Trade that the French had been instrumental in stirring up Indian sentiment against the English. The letter pointed out that the British had discontinued the policy of giving presents to the native people, with the result that the Indians turned to the French. The French had continued to give such presents as a matter of principle regarding them as payment to the Indians for permission to occupy the interior posts. According to Johnson, when the Indians heard of the attack on Fort Detroit in May "the Mississaugas and Chippewas were greatly encouraged by officers sent among them from the governor of New Orleans." 18

17. I.B.I.D. p. 66.

18. O'Callaghan, Edmund B. (ed.) Documents relative to the Colonial History of the State of New York, Vol. VII, p. 525-527.

The Indian uprising was short lived as the cohesion of the native tribes was not strong enough to sustain a prolonged war. Nevertheless, the event had the short term effect of speeding up the deliberations of the British government on the proposed proclamation. In a representation of August 5, 1763, to King George III, the Lords of Trade proposed that:

"a Proclamation be immediately issued ... to permit no grant of Lands nor any settlements to be made within certain fixed Bounds under pretence of Purchase or any other Pretext whatever, leaving all that Territory within it free for the hunting Grounds of those Indian Nations, Subjects of Your Majesty, and for the free trade of all your Subjects, to prohibit strictly all Infringements or Settlements to be made on such Grounds, ..." 19

On 19 September 1763, Halifax reported to the Lords of Trade that:

"His Majesty approves Your Lordships' Proposition of issuing immediately a Proclamation, to prohibit for the present, any Grant or Settlement within the Bounds of the Countries intended to be reserved for the Use of the Indians..." 20

3. The Proclamation of 1763

The formulation of the Proclamation of 1763 sheds some light on the proposition advanced by many historians that the British politicians of the eighteenth century were primarily administrators who arrived at particular solutions for specific problems as these issues arose. An analysis of the Proclamation shows that the formulators simply expressed in more precise terms the practical lessons learned stage by stage during the Seven Years War. According to historian J.M. Sosin:

"The line delineated in the Proclamation of 1763 was merely a temporary expedient; it reflected neither the actual state of settlement nor respective claims of the tribes or whites who had interests on both sides of the Alleghany Mountains. A more accurate boundary was necessary." 21

19. A. Shortt and A.G. Doughty Documents Relating to the Constitutional History of Canada 1759-1791. Ottawa: Queen's Printer (1907) p. 111.

20. I.B.I.D. p. 112.

21. Sosin, J.M. Whitehall and Wilderness. p. 105.

In addition to the creation of four new administrations (Quebec; East and West Florida; Grenada) the Proclamation gave definition to those lands termed "Indian Hunting Grounds".

"And we do further declare it to be Our Royal Will and Pleasure for the present as aforesaid, to reserve under our Sovereignty, Protection and Dominion, for the use of the said Indians, all the Lands and Territories not included within the limits of Our Said Three new Governments ..." (i.e. Quebec, East Florida and West Florida)" ... or within the Limits of the Territory granted to the Hudson's Bay Company ..." (i.e. Rupert's Land)" ... as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid "(i.e. west of the Appalachian watershed).

Consequently "Indian Hunting Grounds" were lands

- (a) under the British Monarch's Sovereignty and Dominion;
- (b) bounded on all sides by fixed administrations;
 - (i) in the south, by East and West Florida
 - (ii) on the west, by Louisiana (Spain)
 - (iii) on the north, by Rupert's Land
 - (iv) on the extreme north-east by the (indeterminate) western boundary of the Coast of Labrador and the northern boundary of Old Quebec
 - (v) on the east by the eastern boundary of Old Quebec and the "Thirteen Colonies."

At this point, consideration should be given to the description of Quebec's boundaries presented in the Royal Proclamation.

"... bounded on the Labrador Coast by the river St. John, and from thence by a line drawn from the head of that river, through the Lake St. John, to the south end of the Lake Nipissim; from whence the said line, crossing the river St. Lawrence, and the Lake Champlain in forty-five degrees of north latitude, passes along the high lands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea; and also along the north coast of the Baye des Chaleurs, and the coast of the gulph of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the river St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid river St. John".

As a result of this imprecise description the question of Labrador's western boundary remained unresolved for 164 years and, along with it, the eastern terminus

to the Indian corridor between Rupert's Land and Old Quebec. In 1927, the Judicial Committee of the Privy Council commented:

"The contention that the territory annexed to Newfoundland was intended to run back to the watershed is supported by the fact that in the Proclamation of 1763 the Province of Quebec is described as bounded on the north by a line drawn from the head of the River St. John to the westward - a description which leads to the inference that the Land on the east or left bank of the River St. John from its head to the sea had been already allotted to the Government of Newfoundland. It has been ascertained by recent surveys that the River St. John here mentioned does not in fact rise near the watershed; but at some point between the height of land and the sea; but it is plain from contemporary maps that the sources of the River Romaine, which rises at the watershed and runs parallel with the St. John, had been taken for the sources of the latter river, and that the eastern boundary of the new Province of Quebec at this point was intended to follow the course of the River Romaine from the watershed to the sea." 22

In 1949, the Labrador boundary settlement of 1927 was incorporated into the B.N.A. Act admitting Newfoundland into Confederation. Since then the Province of Quebec has established a commission to systematically examine provincial boundaries. One of the main contributors to the study was Professor Henri Dorion, who in 1963 wrote a book entitled, La Frontier Quebec - Terre-neuve (Laval). In this work Professor Dorion disputed the findings of the Judicial Committee and proposed a reopening of the boundary question.

The lands belonging to the Hudson's Bay Company (Rupert's Land) were exempt from the provisions of the Royal Proclamation. In Regina v. Sikyea, 43 D.L.R. (2d) 150 (N.W.T.C.A.), Johnson, J.A., observed at page 152:

"The Indians inhabiting the Hudson Bay Company lands were excluded from the benefit of the Proclamation, and it is doubtful, to say the least, if the Indians of at least the western part of the Northwest Territories could claim any rights under the Proclamation, for these lands at the time were terra incognita and lay to the north and not "to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West."

22. Labrador Boundary (1927) 2 D.L.R. p. 416.

In terms of modern Canada, Rupert's Land included all of Manitoba, all of Saskatchewan except for the north-west corner, the southern half of Alberta and northern Ontario and Quebec beyond the height of land.

There has been a great deal of speculation whether the Royal Proclamation applied to the Maritimes. In Rex v. Syliboy (1929) 1 D.L.R. 307, Acting County Court Judge Patterson observed at page 310:

"If that proclamation (1763) be examined it will be found that it deals only with those territories or countries, of which Nova Scotia was not one, that had been ceded to Great Britain by France. These territories or countries, exclusive of Cape Breton and St. John's Island which, as we have seen, were annexed to Nova Scotia, were divided into four distinct governments, namely: Quebec, East Florida, West Florida and Grenada."

4. Application of the Royal Proclamation 1763 - 1774.

Two months after the Royal Proclamation (7 December 1763) the Governor of Quebec, James Murray, was issued Imperial Instructions which contained three provisions (articles 60, 61, 62) specifically relating to Indians.

60. And whereas Our Province of Quebec is in part inhabited and possessed by several Nations and Tribes of Indians, with whom it is both necessary and expedient to cultivate and maintain a strict Friendship and good Correspondence, so that they may be induced by Degrees, not only to be good Neighbours to Our Subjects, but likewise themselves to become good Subjects to Us; You are therefore, as soon as you conveniently can, to appoint a proper Person or Persons to assemble, and treat with the said Indians, promising and assuring them of Protection and Friendship on Our part, and delivering them such Presents, as shall be sent to you for that purpose.

61. And you are to inform yourself with the greatest Exactness of the Number, Nature and Disposition of the several Bodies or Tribes of Indians, of the manner of their Lives, and the Rules and Constitutions, by which they are governed or regulated. And You are upon no Account to molest or disturb them in the Possession of such Parts of the said Province, as they at present occupy or possess; but to use the best means You can for conciliating their Affections, and uniting them to Our Government, reporting to Us, by Our Commissioners for Trade and Plantations, whatever Information you can collect with respect to these People, and the whole of your Proceedings with them.

62. Whereas We have, by Our Proclamation dated the seventh day of October in the Third year of Our Reign, strictly forbid, on pain of Our Displeasure, all Our Subjects from making any Purchases or Settlements whatever, or taking Possession of

any of the Lands reserved to the several Nations of Indians, with whom We are connected, and who live under Our Protection, without Our especial Leave for that Purpose first obtained; It is Our express Will and Pleasure, that you take the most effectual Care that Our Royal Directions herein be punctually complied with, and that the Trade with such of the said Indians as depend upon your Government be carried on in the Manner, and under the Regulations prescribed in Our said Proclamation.

Articles 60 - 62 were indicative of a clear resolve on the part of the British government to enforce the Indian provisions of the Royal Proclamation.* Unfortunately, in practice the colonial officials found it very difficult to enforce the boundary line between the colonies and the "Indian Hunting Grounds." 23

Part of the difficulty on the frontier after 1763 was that the proclamation line did not reflect the actual state of settlement in North America. Some of the settlers west of the Alleghany mountains were legally entitled to their lands under grants made by Virginia before the outbreak of the Seven Years War. And in all fairness to the settlers, it is important to note that the Imperial government was inconsistent in its policies. By the terms of the Proclamation land claims were denied west of the proclamation line, but as late as 1766, the Auditor General for Plantations, Robert Cholmondeley, insisted that the colonists pay quit rents for these same lands. 24

Despite the Proclamation line, land speculators from the Thirteen Colonies (including George Washington, Thomas Walker and William Crawford**) secretly marked out lands on the Monongehela, Greenbriar and New Rivers. In October 1765 the Privy Council approved additional instructions to the governors of Virginia and Pennsylvania. The governors were instructed to remove all settlers on lands contiguous to the Ohio River - if necessary with the aid of troops. However these orders had little

23. Shortt and Doughty. Documents Relating to the Constitutional History of Canada. p. 145.

24. Sosin, J.M. Whitehall and Wilderness. p. 106.

* Articles 60, 61 and 62 were repeated in the Instructions issued to Murray's successor, Guy Carleton, in 1768.

** not to be confused with William Redford Crawford.

effect as there was no effective law enforcement agency for the interior region. In contrast to the land-hunger of the Thirteen Colonies Guy Carleton, who had recently been appointed Governor of Quebec, reported to Shelburne on 20 December 1766 that he had not received "the least Intimation, either Public or Private" that the inhabitants of Quebec had mistreated the Indians residing within or adjacent to the colony. ²⁵

Between 1763 and 1774 the management of Indian Affairs in America was dominated by William Johnson of Upper New York. Johnson's influence and prestige among the tribes was great. In April 1764 Johnson signed a peace and land cession treaty at Johnson Hall with the Seneca Indians. By Article 3, the Senecas ceded:

"...to His Majesty and his successors for ever, in full Right, the lands from the Fort of Niagara, extending easterly along Lake Ontario, about four miles, comprehending the Petit Marais, or landing place and running from thence southerly, about fourteen miles to the Creek above the Fort Schlosser or little Niagara, and down the same to the River, or Strait and across the same, at the great Cataract; thence Northerly to the Banks of Lake Ontario, at a Creek or small Lake about two miles west of the Fort, thence easterly along the Banks of the Lake Ontario, and across the River or Strait to Niagara, comprehending the whole carrying place, with the Lands on both sides of the Strait, and containing a Tract of about fourteen miles in length and four in breadth--" ²⁶

On 8 July, Johnson travelled to Niagara where he met with deputies from the Hurons, Ottawas, Chippewas, Menomonies, Foxes, Sakis and Puans. There he signed a peace treaty with the Hurons of Detroit in which they acknowledged "His Britannic Majesty's right to all the lands above their Village, on both sides the strait, to Lake St. Clair, in as full and ample manner as the same was ever claimed or engaged by the French." ²⁷ This treaty was followed by another with the "Chenussio (Genessee)

25. I.B.I.D. p. 124.

26. O'Callaghan, E.B. (ed.) Documents relative to the Colonial History of the State of New York, Vol. VII, p. 612.

27. I.B.I.D. p. 651.

Indians and other Enemy Senecas" dated 6 August, 1764. In addition to the lands acquired at Johnson Hall in April, the Genesseees surrendered

"... all the lands from the upper end of the former Grant (and of the same breadth) to the Rapids of Lake Erie, to His Majesty, for His sole use, and that of the Garrisons, but not as private property, it being near some of their hunting grounds; so that all that Tract, of the breadth before mentioned, from Lake Ontario to Lake Erie, shall become vested in the Crown, in manner as before mentioned ..." 28

It should be noted that the British administrators found it necessary in 1781 to take a title surrender for the same tract (this time only on the Upper Canada side) dealt with in April and August 1764. This time the Chippewas and Mississaugas surrendered the land noting that in 1764, the cession was "not then fully arranged and finally executed."

In June 1764 Johnson presented a comprehensive plan on Indian Affairs to the Board of Trade in which he proposed that Indian interpreters, black smiths and deputy Indian agents be stationed at the principal forts of the interior.* On 10 July 1764 the Board of Trade sent a circular letter to the colonial officials in America outlining Johnson's plan. Although the plan's acceptance was general, the Board of Trade had to defer action until the Grenville administration could find a source of revenue to finance the Imperial scheme. Until permanent revenue could be found, the Plan of 1764 lay dormant.

In 1764 increased political pressure was brought to bear on London by colonial land speculators who wanted a revision of the 1763 proclamation line. By 1765, John Stuart had negotiated a new line in the southern district. However, in the northern district negotiations depended upon the settlement of conflicting claims among the various Indian tribes, and the claims of colonial land speculators. In 1765 Johnson broached the question of negotiating a new boundary line with the northern tribes.

28. I.B.I.D. p. 653.

* Appendix B.

Soon he was able to determine that the Six Nations and Cherokees of the Ohio Valley were claiming the same hunting lands. Johnson proposed to take no action until these conflicting tribal claims were resolved.

For three years the British Government hesitated to issue instructions for the negotiation of a new northern boundary line. In the meantime Lord Shelburne took charge of the Board of Trade and began to prepare a new imperial program for the interior. On 14 November, 1767, Shelburne wrote the Governor of Quebec that:

"As an accurate knowledge of the Interior Posts of North America would contribute much towards enabling...Ministers to judge soundly of the true Interests of the different Provinces, I cannot too strongly recommend to you the encouraging of such Adventurers as are willing to explore those Parts which have not hitherto been much frequented and consequently are scarcely, if at all known..." 29

Shelburne was convinced that exploration and settlement of the interior was essential to reduce the costs of frontier garrisons. On 5 October 1767, Shelburne presented his proposals to the Board of Trade supported by letters of approval from Generals Gage and Amherst, local Indian superintendents, Canadian merchants and land speculators.

In January 1768 Shelburne lost control of colonial affairs as a result of changes in the British ministry. The Earl of Hillsborough who now headed the new American Department was determined to introduce a new western policy capable of financing colonial defence requirements. On 7 March 1768 Johnson was authorized by the Board of Trade to negotiate a new northern boundary line for the Indian hunting grounds.

The instructions issued to Johnson in March specifically cautioned him against extending the boundary line down the Ohio River from the mouth of the Great Kanawha to the Cherokee (Tennessee) River.³⁰ There is evidence that Johnson deliberately

29. Sosin, J.M. Whitehall and Wilderness. p. 157.

30. I.B.I.D. p. 172.

disobeyed these instructions.

In June 1768, three months after he received his instructions from the Board, Johnson was vacationing at New London, Connecticut. There he was visited by George Croghan (Johnson's deputy), Samuel Wharton of Philadelphia and William Trent, all determined to obtain additional lands on the Ohio. The only solution was to purchase more land from the Six Nations than authorized by the Board of Trade. According to Sosin:

"... Johnson had indicated to John Blair (President of the Virginia council) in September, before the opening of the Congress (at Ft. Stanwix), that it was possible and desirable to extend the boundary on the basis of claims of the Six Nations." 31

Clearly Johnson intended, before the opening of the negotiations at Ft. Stanwix in November, to accept the inflated land claims of the Six Nations in order to obtain for the traders and land speculators more land than ordered by the Commissioners of Trade. Most of the negotiating done at Ft. Stanwix was in private, and as Sosin has noted:

"Ostensibly at the insistence of the Indians, Sir William extended the boundary line from the confluence of the Ohio and Great Kanawha to the mouth of the Tennessee River." 32

The additional land purchased at Ft. Stanwix (not authorized by the Board) and later called "Indiana", was territory originally claimed by Virginia in 1763.

"The boundary of the grant to the traders began at the south side of Little Kanawha Creek and followed the stream to Laurel Hills and along this range to the Monongahela (River). It then followed the river to the southern boundary of Pennsylvania and along this line to the Ohio." 33

In 1770, the southern boundary was revised by the Treaty of Lochaber so as not to antagonize the Cherokees.*

By 1772 the situation in the interior had become chaotic. During a meeting at German Flatts the Indians complained of abuses at the hands of traders and land speculators. New plans were already laid to establish a transmontane colony named

31. I.B.I.D. p. 176.

32. I.B.I.D. p. 175.

33. I.B.I.D. p. 175.

* See Appendix D

"Vandalia". Troops which could have been used to maintain order in the interior were occupied by colonial disorders on the coast and restricted by the lack of funds.

In July 1773, William Murray, a trader of the newly formed Illinois Company negotiated and contracted a deed with certain tribes for territory between the Wabash and Illinois Rivers.* Soon after two local French inhabitants also purchased lands from one of the tribes. The French traders applied to Captain Hugh Lord, commander at Ft. Gage, to register their deeds. The commandant refused, considering those lands to be the property of the British monarch "ceded to him on the peace by the French king." ³⁴ The Secretary of State for the American Department instructed Frederick Haldimand (Gage's temporary replacement) to give Captain Lord all possible assistance to prevent the speculators from establishing any settlements as a consequence of "those pretended titles."

In February 1774 instructions were issued to the governors of Nova Scotia, New Hampshire, New York, Virginia, the Carolinas, Georgia and Florida, to suspend all land grants and rescind all licences held by private individuals to purchase Indian lands. The new policy proved of little value in checking the activities of Virginia land speculators. Governor Dunmore of Virginia expressed his intention of granting patents for lands in the Kentucky basin to the officers and soldiers claiming titles under the Proclamation of 1763. When the Virginians received news that the Privy Council had exempted soldiers under the Proclamation from new restrictions on granting lands, George Washington pressed Dunmore on behalf of the provincial officers. Taking advantage of the withdrawal of royal troops from Fort Pitt and the failure of the Pennsylvania Assembly to garrison the post, Dunmore sent Dr. John Connally to take possession of the fort and rename it Fort Dunmore. Dunmore's bold gamble seemed

34. I.B.I.D. p. 233.

* See Appendix A. - "The Yorke-Camden Opinion".

to succeed when Dartmouth temporarily sanctioned the new Virginia government at the forks of the Ohio. The immediate result of Dunmore's action was an Indian uprising - Dunmore's War. According to Patrick Henry who was with Dunmore during the conflict, the Imperial orders from the ministry (1774) prohibiting land grants in the region had led the governor to press the war on the natives to force them to cede territory on the right bank of the Ohio River near Fort Dunmore.

By the end of 1773, the correspondence of the Earl of Dartmouth, First Lord of Trade, indicates that the British ministry had decided to terminate the program of accomodation which the British government had adopted in 1768 to reconcile the objections of colonial governments to imperial regulation. The failure of the colonies to legislate for the Indian trade, the withdrawal of interior garrisons, and increased tension with the Indian tribes in the face of continuous encroachments on their lands had forced the North Ministry to adopt a new approach to the northern wilderness. Jurisdiction over the interior would henceforth be exercised through the province of Quebec, the only colony which had demonstrated an ability to co-exist with the native tribes.

5. The Quebec Act - 1774

The historian J.M. Sosin has remarked:

"In the years preceeding the Revolution one can discern a constant element in British policy: the desire to secure the frontier. To achieve this goal, the ministers had to satisfy the tribes; prevent encroachments on their lands, and accord them an equitable trade program." 35

The British colonists south of the St. Lawrence had refused to acknowledge the necessity for imperial control of the wilderness and responsibility for the taxes required to finance such a program. Only the Canadians - and in this Governor Guy Carleton had fully supported them - had demonstrated ability and willingness to deal

fairly with the tribes. In addition, with the withdrawal of the bulk of British troops from the interior, the problem of the French had become acute. Some concession was necessary to hold their allegiance to the British Crown. The extension of the government of Quebec over the interior, under a form of government following the traditions and circumstances of the French inhabitants, was the logical solution after a decade of experimentation.

The Quebec Act contained no specific mention of Indians, but article 3 provided that no previous title would be changed:

III. Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary or alter any Right, Title or Possession, derived under any Grant, Conveyance or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that this same shall remain and be in Force, and have Effect, as if this Act had never been made." 36

While the Quebec Act was before Parliament, the Colonial Office had been considering additional measures to prevent unlawful settlement in the interior, to administer justice more effectively in the area annexed to Quebec, and to regulate the Indian trade. The ministry resolved these questions in the additional instructions issued to Guy Carleton at Quebec in January 1775.

Carleton was directed to create local governments with limited jurisdiction in criminal and civil matters at posts such as Vincennes, Detroit and Michilimackinac. A responsible official would administer these districts and fix definite boundaries beyond which no settlements would be allowed. The local trade with the Indians would be open to traders from all the colonies who would first obtain licenses from the governors and observe regulations passed by the Quebec council.

36. Shortt and Doughty. Documents relating to the Constitutional History of Canada. p. 402.

A forty-three point plan for the Future Management of Indian Affairs accompanied the instructions to Carleton. Article 42 provided for a survey to determine the exact boundaries to Indian lands. Articles 41 and 43 related to the purchase of Indian lands:

"41. That no private person, Society, Corporation, or Colony capable of acquiring any Property in Lands belonging to the Indians; either by purchase of, or Grant, or Conveyance from the said Indians, excepting only where the Lands lye within the Limits of any Colony, the soil of which has been vested in proprietors, or Corporations by Grants from the Crown; in which Cases such Proprietaries or Corporations only shall be capable acquiring such property by purchase or Grant from the Indians."

"43. That no purchases of Lands belonging to the Indians, whether in the Name and for the Use of the Crown, or in the Name and for the Use of proprietaries of Colonies be made but at some general Meeting, at which the principal Chiefs of each Tribe, claiming a property in such lands, are present..." 37

6. Indian Relations with the "Canadians" 1760-1774

Article 40 of the terms of capitulation at Montreal, 8 September 1760, provided for the Indian people who had fought for France during the Seven Years War. In part Article 40 read:

"The Savages or Indian allies of his most Christian Majesty, shall be maintained in the Lands they inhabit if they choose to remain there..." 38

This provision applied to such established Indian settlements as Caughnawaga, St. Regis, Lake of Two Mountains and Lorette*. It is one of the ironies of history that the Iroquois of Caughnawaga, who had received their lands from the French (1680), led General Amherst through the Lachine Rapids in September 1760 to lay siege to Montreal. The British showed their gratitude in September 1762 when General Gage's Military Council restored a disputed strip of land, adjacent to the Caughnawaga Reserve and claimed by the Iroquois, to the Jesuit Order at Laprairie.

37. I.B.I.D. p. 436.

38. I.B.I.D. p. 27.

* See Henri Brun "Les droits des Indiens sur la territoire du Québec. Les Cahiers de Droit. (1969) 10 c. de - D. p. 441.

After the Treaty of Paris (1763) confirmed British sovereignty over the former French colony, some western tribes around the posts at Detroit and Michilimackinac remained loyal to the French. Sir William Johnson countered this situation by instructing Captain Claus to hold a congress of "all the (Indian) nations in Canada" at Caughnawaga. At this meeting, Claus urged the Indians to send messangers into the western interior to notify the hostile tribes that they were now subjects of the British Crown and all hostilities should cease; subsequently tribes from La Presentation, Three Rivers, St. Francis and Lorrette carried Johnson's message to the western tribes. No Iroquois envoys were included in this group as their relations with the western tribes were not amicable. 39

During the period from 1760-1774 the colony of Quebec grew little in geographic size and population. Its economy was still based on the fur trade and no demands were placed before government officials for additional lands in the interior. Although the Caughnawaga Indians did not experience abuses from settlers encroaching on their lands, nevertheless, they allied themselves with the Ohio tribes who met William Johnson at German Flatts in July 1770 to complain of unfair treatment at the hands of traders and settlers. Indeed, for the Canadian tribes near Quebec the 1760 - 1774 period was marked by calm and order, a direct contrast to the situation of the American tribes.

7. Indian Entitlement and the Royal Proclamation of 1763

(a) Geographic Area:

Under the terms of the 1763 Royal Proclamation specific lands were set aside for the Indians, designated as "Indian Hunting Grounds." These lands had definite boundaries which did not extend into the uncharted regions of western and northwest Canada. The map opposite indicates the extent of these "Hunting Grounds". The

39. O'Callaghan, E.B. Documents relative to the Colonial History of the State of New York. Vol. 8 p. 542.

question which must be answered is whether the Royal Proclamation was declaratory of an original "aboriginal title" to these lands.

(b) The Status of Native Lands in International Law & Practice
(16th Century to 1760)

The earliest opinion on the status of aboriginal lands conquered by the European powers was presented by the Spanish theologian Vitoria in the sixteenth century. Vitoria stated that there was a prior native sovereignty to the territory conquered by the Spanish armies in America. However, as M.F. Lindley has noted in The Acquisition and Government of Backward Territory in International Law (London, 1926):

"He (Vitoria) suggested with hesitation that if the Indians were not capable of forming a State, then, in their own interests, the King of Spain might acquire sovereignty over them in order to raise them in the scale of civilization treating them charitably and not for his personal profit." 40

Vitoria was perhaps the leading exponent of the "Conquest Theory", according to which lands could be lawfully acquired from the aboriginal inhabitants by military force. Professor Henri Brun noted that:

"At the time of the discovery of the present territory of Quebec, numerous authors of International Law acknowledged therefore the initial sovereignty of the Indians over the whole discovered territory." 41

However, Brun states that even if a prior Indian sovereignty (admitted by the Conquest Theory) had survived after the French discovered Quebec in the sixteenth century, that native sovereignty would have been denied by subsequent stages of International Law. According to the principle of "continuous manifestation" derived from the Palmas Island case, 42 an initial sovereignty must in fact be maintained

40. I.B.I.D. p. 420.

41. I.B.I.D. p. 420.

42. (1935) R.G.D.I.P. 172, D.O. O'Connell, International Law, London, Stevens, 1965, Vol. 1, p. 471.

throughout time and throughout successive legal systems.⁴³ In addition, Professor Brun notes that legal theoreticians such as Vitoria cannot exclusively be relied upon as a source of law because their writings lacked constancy and consistency. In reality "positive law" resided in the international practice of the larger colonizing nations of the day.

In the eighteenth century the Conquest Theory progressively gave way to the "Occupation Theory". The later authors of International Law (such as Vattel) no longer attempted to base the sovereignty of the European states over new territories on the military defeat of the aboriginal population (the only method by which the Conquest Theory permitted the acquisition of native lands), but now treated these territories as "deserted" countries, sovereignty to which could be acquired by peaceful occupation and natural expansion of settlement.

"Vattel poses certain conditions that recall the actual territory of Quebec during the eighteenth century with exactness: there must be a "vast area", which the nomadic and small (native) populations cannot occupy entirely. It justifies the colonial implantation as the result of a demographic necessity of European expansion, which materialized itself in the form of an occupation that was a priori peaceful. This occupation forcibly denies the existence of a native sovereignty over the territory so described, but it does not exclude the fact that this native sovereignty may exist over a part of the discovered territory. The occupation must in fact, be real, and criteria established to that effect - and it must only deal with "pushing the wild tribes within the smallest limits."⁴⁴

Finally, in the nineteenth century a more radical version of the "Occupation Theory" was developed by the British. Now territories inhabited by the native

43. Brun, H. p. 421.

44. I.B.I.D. p. 422.

populations could be fully acquired by limited occupation. This theory absolutely denied the existence of any prior native sovereignty.

As Brun previously stated, the actual practices of the colonial powers were more important than theoretical writings on contemporary International Law. According to Brun:

"France has never acted in North America in a manner that showed a recognition of a native sovereignty. It did not do so with respect to the natives themselves, nor with respect to the territory." 45

Indeed France successively granted the lands of New France to individuals and Companies on terms that implicitly excluded the recognition of any previous sovereignty. For example, the 1627 charter for the Company of New France (obtained from the French King) granted them "in full ownership"

"... All the said land of New France called Canada, along the coast, from Florida ... until the Arctic Circle by way of latitude and, by way of longitude, from the Island of Newfoundland running to the West, until the big lake called "mer douce" (Sweet Lake), and beyond into the lands, far and wide and beyond and as far as they (the Co. of New France) will be able to extend themselves and make known the name of His Majesty." 46

Since the French King granted a similarly worded charter to the West Indies Company (successor in 1664 to the Company of New France) Brun contends that the French King " ... did not recognize any right in the property other than his own right or the rights that he had granted." 47 The authors of Native Rights in Canada (1970) concur with Brun's opinion that "at no time was an aboriginal title expressly recognized" by the French. 48

45. I.B.I.D. p. 428.

46. I.B.I.D. p. 427.

47. I.B.I.D. p. 430.

48. Native Rights in Canada I.E.A. (1970) p. 56.

Contrary to Professor Brun's stand, Professor G. La Forest in Natural Resources and Public Property under the Canadian Constitution, maintained that:

"France, like other European powers also followed a policy of recognizing the Indian title and on the capitulation of Canada attempts were made to protect the Indians." 49

Professor La Forest claimed that Article 40, Articles of Capitulation (Montreal - 1760), protected the "Indian title" in the area of Old Quebec. In part, this Article read:

"The savages or Indian Allies of His Most Christian Majesty shall be maintained in the lands they inhabit, if they choose to reside there; they shall not be molested on any pretence whatsoever, for having carried arms and served His Most Christian Majesty ..." 50

Commenting on this provision, Brun states that:

"...the French had the habit of reserving relatively precisely described territories in favour of the Indians ... but there is no text that leads us to believe that the French colonizers had issued some general title in the territory to the Indians of New France." 51

As for the colonial practice of Great Britain, Brun maintains that:

"...the charters, letters patent or commissions granted by the King of England to his various discoverers or founders, at the time, generally contained territorial concessions that invariably ignored any native sovereignty." 52

Furthermore,

"England subjected the native populations to the English law; like France she denied them any sovereignty." 53

This fact is emphasized by the clause in the Royal Proclamation describing the Indians as living "under Our sovereignty, Our protection and Our authority."

Considering the evidence, Professor Brun concludes:

49. La Forest, G. Natural Resources and Public Property under the Canadian Constitution (1969) p. 109.

50. I.B.I.D. p. 109.

51. Brun, H. p. 440.

52. I.B.I.D. p. 431.

53. I.B.I.D. p. 432.

"It must definitely be admitted that the practice of the nations, during the sixteenth and seventeenth centuries never resulted in the concrete fact of admitting a native sovereignty, as alleged by the doctrine of the time. That practice appeared to lie general and constant, and it leads us to believe that it reflects more correctly the condition of International Law at that time. The conquest theory has not been followed in all its logical implications; the occupation theory does not apply to the natives. Whether a conquest or occupation is involved, according to the distinction of the doctrines, it seems that the concrete result was always the same: the denial of any native sovereignty, the denial of a true native right." 54

Brun states that to confirm the survival of a native title (supposing it did exist after 1760) it would be necessary to show that: 1) by the Treaty of Paris (1763), France transferred the burden of the "Indian title" on Quebec lands to England, and 2) that the 1763 Proclamation confirmed Indian land rights in a territory that previously belonged to the Indians.

(c) The effect of the Conquest and the Peace of Paris

In 1760 the British conquest of Canada changed the sovereignty and introduced a different legal system.

"Consequently, an Indian sovereignty over the present Quebec territory, to the extent that it would have existed, disappeared automatically, after an ultimate transfer of the territory by France." 55

Indeed in the 1763 Peace of Paris there is no mention of Indians; however, in passing, it would be well to bear in mind the administrative fact that the Hudson Bay Co. had control - before, during and after the Conquest - of a substantial portion of "present Quebec" in the form of Rupert's Land.

(d) The Royal Proclamation and the Courts.

The importance of the Royal Proclamation for Indian rights has been given consideration by the courts on many occasions. Perhaps the key judgement in any understanding of the attitude which the courts have taken on the Proclamation's terms was handed down in 1774.

54. I.B.I.D. p. 432.

55. I.B.I.D. p. 433.

In the case of Campbell v. Hall (Leeward Islands), the powers of the Crown in newly annexed territories were given definition and established as basic principles of the British Constitution.

- i) A country conquered by British arms becomes a dominion of the Crown and, therefore, subject to the legislature, the Parliament of Great Britain.
- ii) The conquered inhabitants once received under the King's protection become subjects and are to be universally considered in that light, not as enemies or aliens.
- iii) The law and legislative government of every dominion equally affects all persons and all property within the limits thereof and is the rule of decision for all questions which arise there. Whoever purchases, lives or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man or the Plantations has no privilege distinct from the natives." 56

For the inhabitants of conquered or ceded lands ruled by Britain this decision was of great importance for it settled three legal concepts fundamental to any colonial inhabitant....citizenship, land title and compliance with the laws of the land.

In 1888, the Judicial Committee of the Privy Council in the St. Catherine's Milling Case heard an appeal "whether certain lands within the boundaries of Ontario belonged to the Province or to the Dominion of Canada." In the course of their judgement the Court referred to the "Indian Hunting Grounds" provision of the Royal Proclamation. Commenting upon the nature of the Indian tenure to these "Hunting Grounds" the Court held:

"...the tenure of the Indians was a personal and usufructuary right, dependent upon the good will of the Sovereign. The lands reserved are expressly stated to be "parts of the dominions and territories" and it is declared to be the will and pleasure of the sovereign that, "for the present" they shall be reserved for the use of the Indians, as their hunting grounds, under his protection and dominion." 57

On the subject of the "Indian right" to these "Hunting Grounds" the Court stated:

"There was a great deal of learned discussion at the Bar with respect to the precise quality of the Indian right, but their Lordships do not consider it necessary to express any opinion upon the point. It appears to them sufficient for the purposes of this case that there has been all along vested in the Crown

56. O'Reilly, J. Whither the Indian (Sept. 1969) p. 7.

57. 10 A.C. (1888) p. 25.

a substantial and paramount estate, underlying the Indian title, which became a plenum dominium whenever that title was surrendered or otherwise extinguished." 58

The real importance of the St. Catherine's decision was that the Judicial Committee recognized that the political sovereignty of the Crown extended over those lands to which the Proclamation applied. The assumption of this sovereignty nullified any claims the Indian people might have had to a sovereign and independent status. This decision clearly demonstrated the close juridical relationship between citizenship and land ownership.

In subsequent judgements since 1888 the nature of the native title has been considered by many courts and the result has been the implicit denial that the Indian people enjoyed any sovereign status over lands coming under dominion of the Crown. Such decisions were reached in Sero v. Gault (Six Nations, Ontario) 1921; Rex v. Syliboy (Nova Scotia) 1928; Warman v. Francis (Micmacs, Nova Scotia) 1958 and Logan v. Styres (Six Nations, Ontario) 1958.

In conclusion, Professor Brun states:

"... it is possible to say that in no case, as far as we know, has it been correctly described as meaning anything else than a right to hunt ... it seems clear that the right to hunt (and fish) is limited to subsistence for himself and his family." 59

(e) "The Corridor" and "New Quebec".

According to Professor Brun:

"The Indian territorial rights which it (the Royal Proclamation) created were not to be applied to the domain granted to the (Hudson's Bay) Company." 60

Thus in Quebec, "Indian Hunting Grounds" referred only to the corridor lands lying to the south of the Height of Land (the southern boundary of Rupert's Land) and north of the boundary of the old "Government of Quebec".

Since the 1763 Proclamation did not apply to Rupert's Land a separate set of legal instruments must be examined when considering Indian territorial claims in New

58. I.B.I.D. p. 56.

59. H. Brun, p. 449.

60. I.B.I.D. p. 459.

Quebec. In 1868 the Rupert's Land Act authorized the Crown to transfer the Hudson Bay Company lands to Canada. Section 3 of this Act declared that the reassignment would be made on conditions established by the Company, the British Government and the Canadian Parliament. Article 14 of the Order-in-Council (1870) admitting Rupert's Land and the North-Western Territory into Confederation stipulated:

"14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian government in communication with the Imperial government; and the company shall be relieved of all responsibility in respect of them." 61

When part of Rupert's Land was annexed to Quebec in 1898 there was no mention of Indian territorial rights in the provincial legislation. However in 1912, when the District of Ungava was added, the provincial legislation stated:

- (c) "That the province of Quebec will recognize the rights of the Indian inhabitants in the territory above described to the same extent, and will obtain surrenders of such rights in the same manner, as the Government of Canada has heretofore recognized such rights and obtained surrender thereof, and the said province shall bear and satisfy all charges and expenditures in connection with or arising out of such surrenders;
- (d) That no such surrender shall be made or obtained except with the approval of the Governor-in-Council;
- (e) That the trusteeship of the Indians in the said territories, and the management of any lands now or hereafter reserved for their use, shall remain in the Government of Canada subject to the control of Parliament."

Thus any native claims to compensation in New Quebec rest on 1) Article 14 of the 1870 Order-in-Council admitting Rupert's Land into Confederation, and 2) the 1912 Quebec Boundary Extension Act.

The 1912 Boundary Act stipulated that "the province of Quebec will recognize the rights of the Indian inhabitants in the territory above described...". Since these lands were once the property of the Hudson Bay Co., then the 1932 Alberta Supreme Court judgement in Rex v. Wesley 4 D.L.R. 774 is of assistance in defining Indian "rights" in

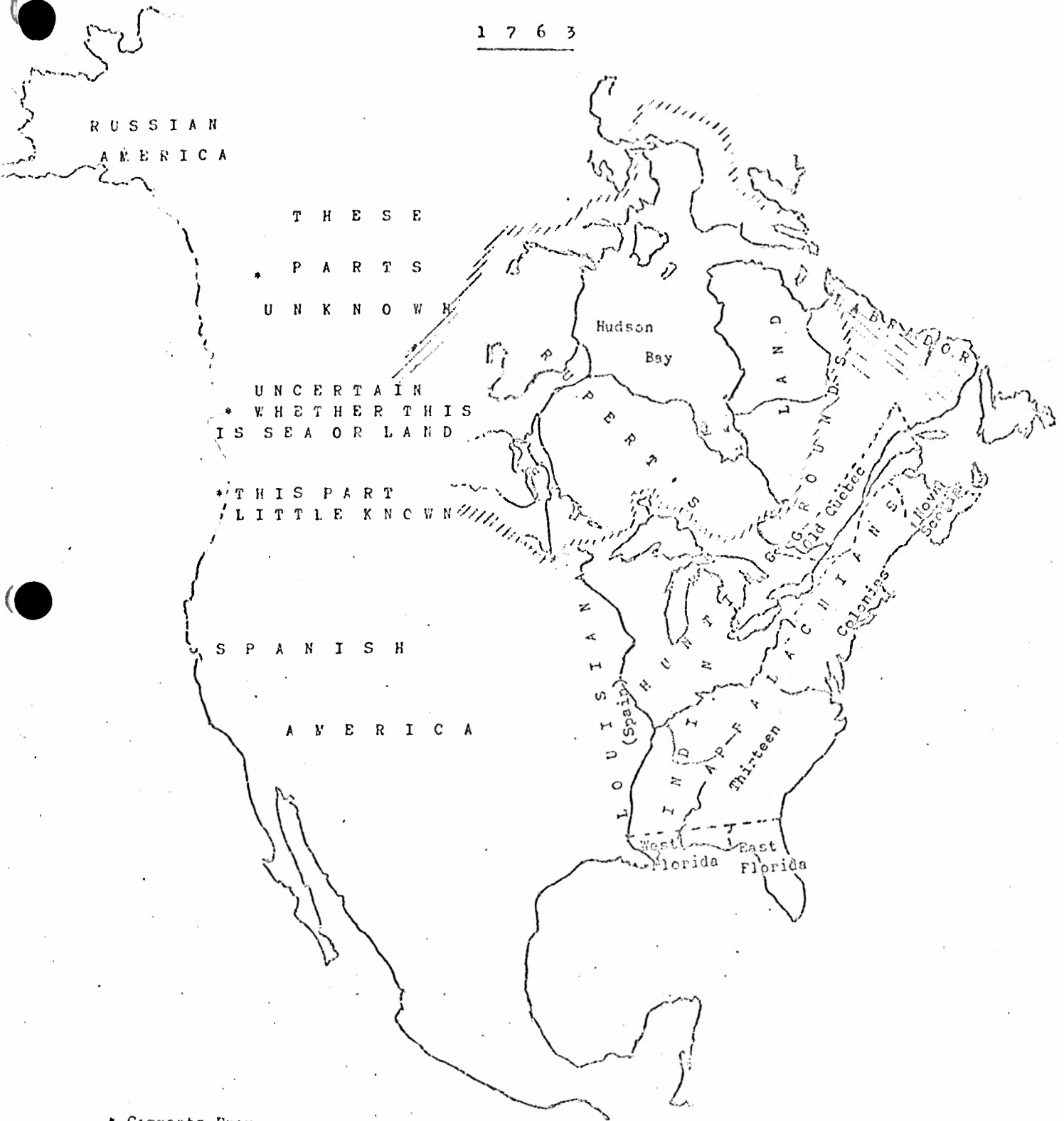
New Quebec. At page 787 the Court stated:

"Whatever the rights of the ... Indians were under the Hudson's Bay regime, it is clear that at the time of the making of the treaty to which I next allude (22 September, 1877), the Indian inhabitants of these Western plains (once part of the Hudson Bay Co.'s domain) were deemed to have or at least treated by the Crown as having rights, titles and privileges of the same kind as Indians whose rights were considered in the St. Catherine's Milling Case."

R O Y A L

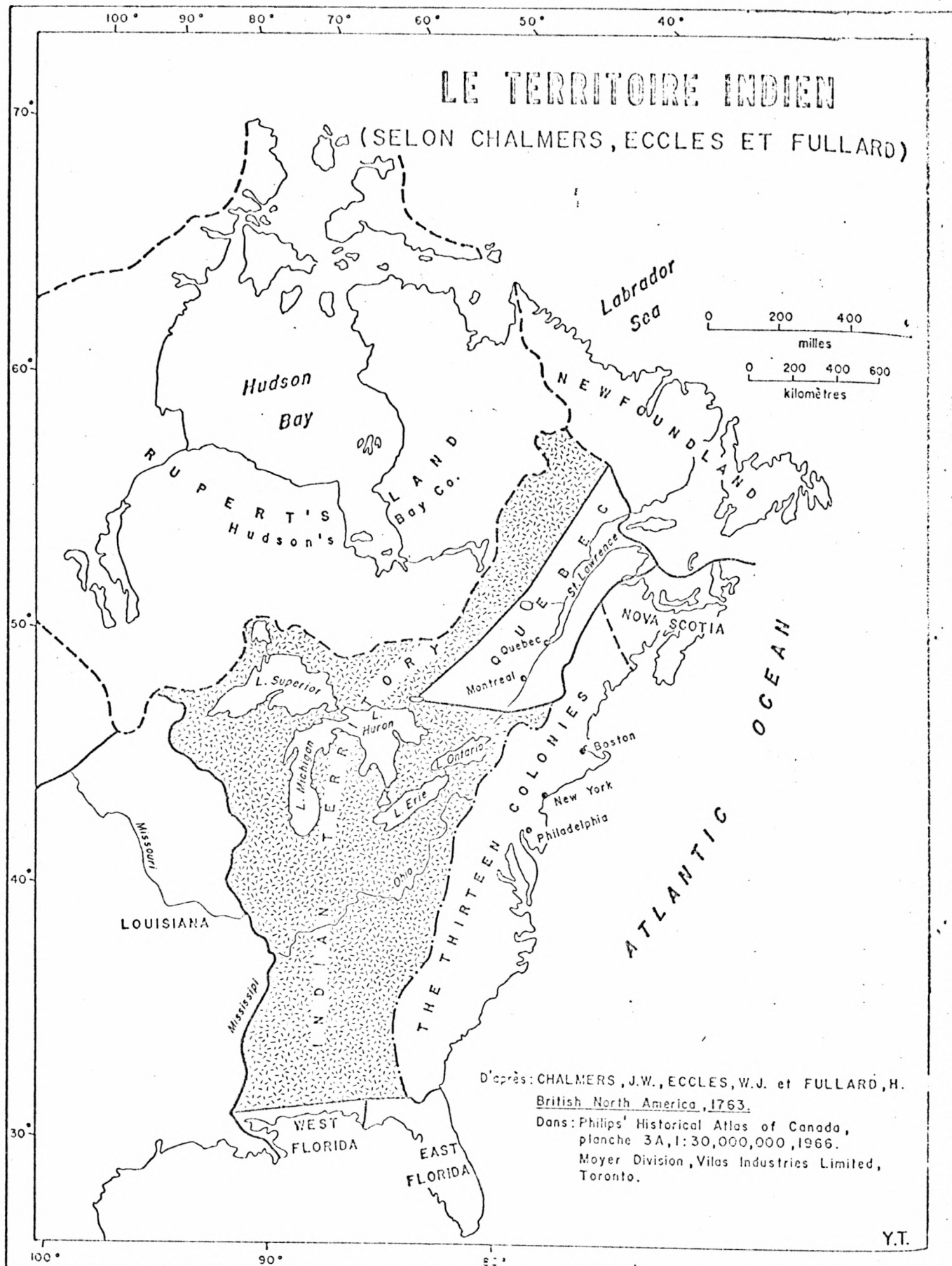
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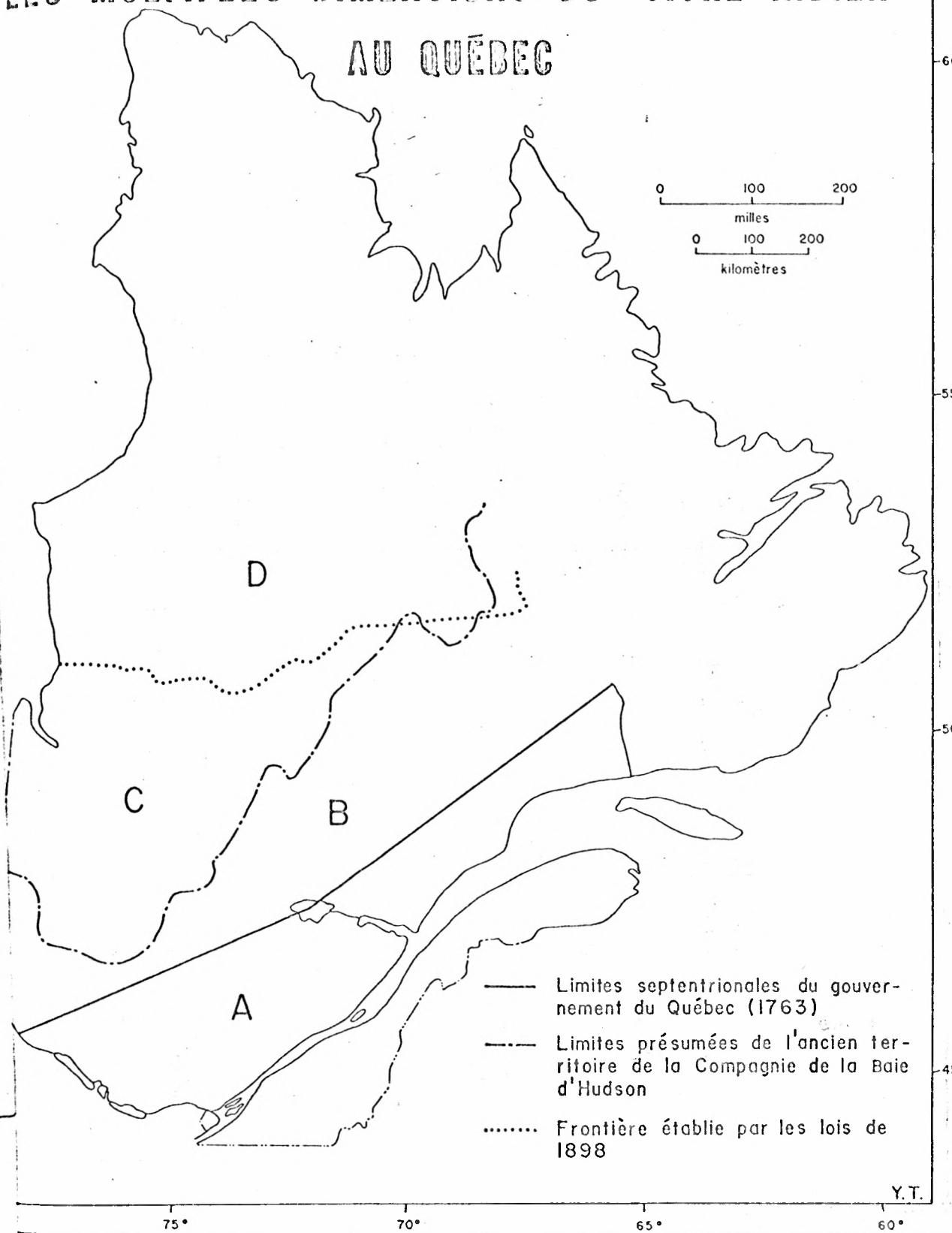


* Comments From
John Rocque's
Map 1761

Treaties
November 1970



LES MULTIPLES DIMENSIONS DU "TITRE INDIEN" AU QUÉBEC



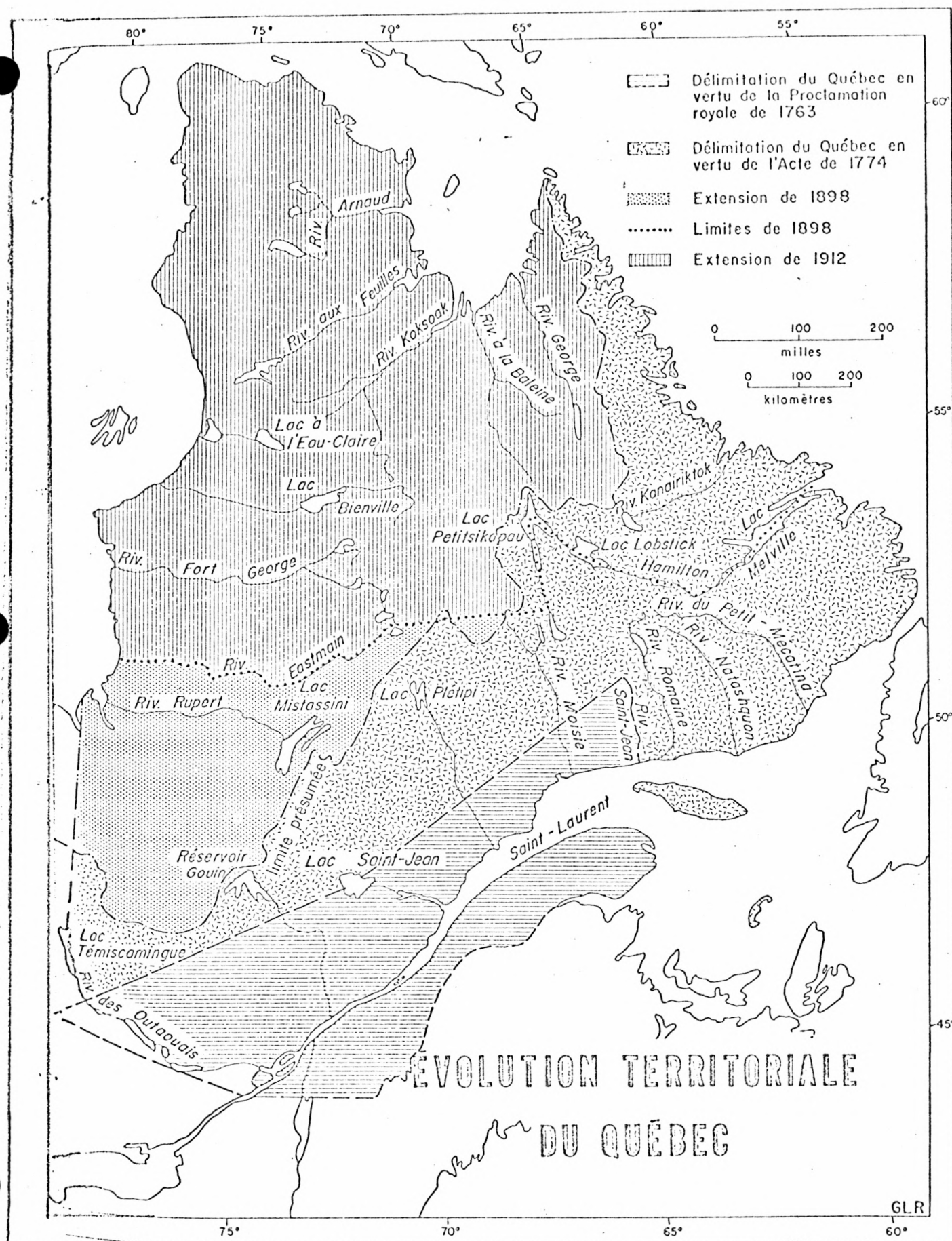
Les multiples dimensions du "titre indien" au Québec

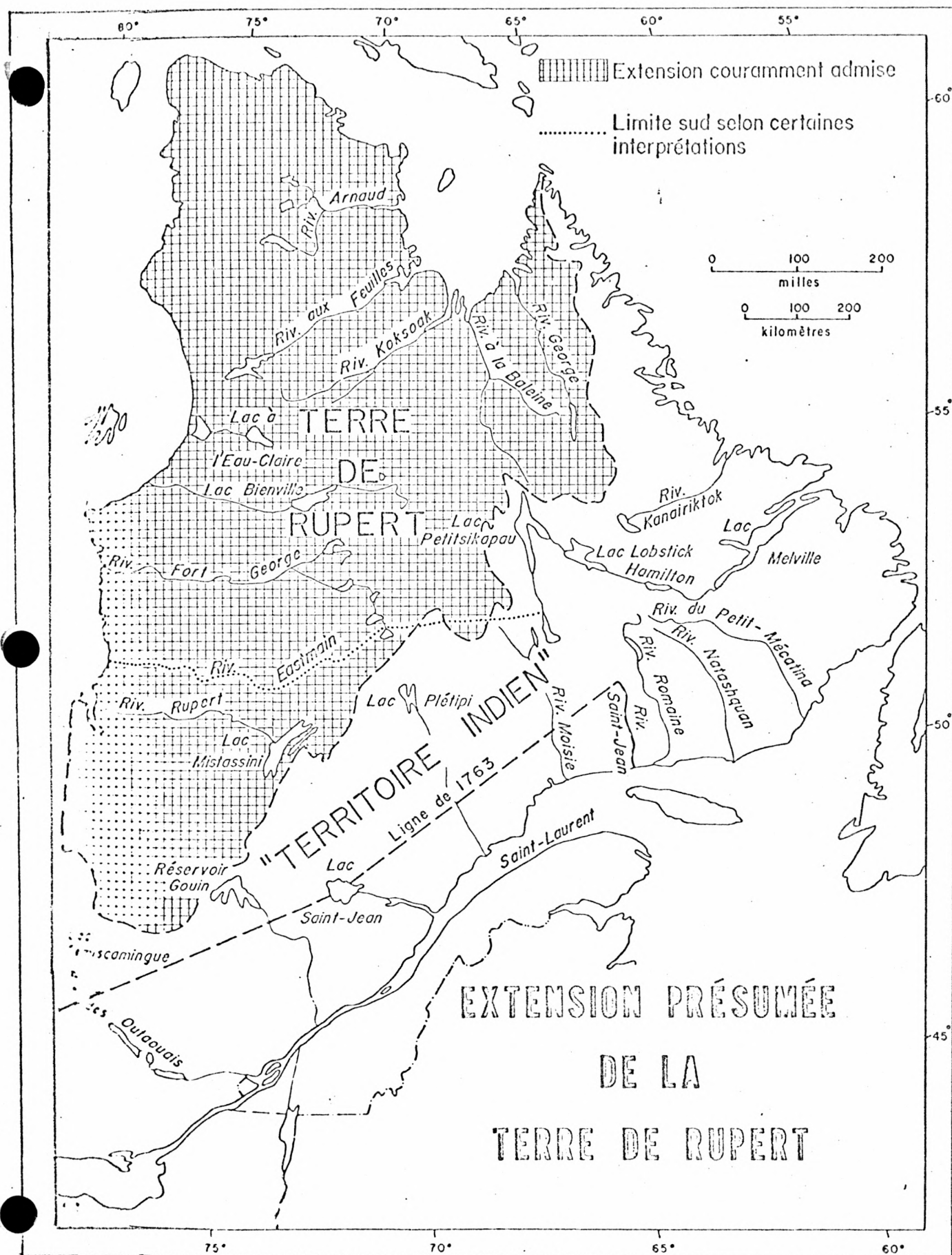
(figure 16)

- A. Territoire du gouvernement de Québec (1763). Les Indiens n'y détiennent que les droits reconnus sur les établissements qu'ils occupent (plus tard institués en "réserves").
- B. Situation présumée du territoire réservé aux Indiens par la Proclamation royale.
- C. Partie (présumée) de l'ancien territoire de la Compagnie de la Baie d'Hudson affectée d'une garantie en faveur des Indiens qu'ils seraient remboursés pour les terres qui leur seraient soustraites.
- D. Région affectée de la même garantie qu'en C, mais aussi d'une obligation imposée au Québec d'éteindre le titre indien sur ce territoire.

Note a) Si l'on interprète l'histoire en plaçant les limites de la Terre de Rupert à la rivière Eastmain, il faut ignorer C et reporter les limites septentrionales de B jusqu'à la rivière Eastmain (limite sud de D).

Note b) Les limites du côté du Labrador ne sont pas indiquées, les interprétations pouvant être nombreuses (voir tranche 3 du Rapport de la Commission d'étude sur l'intégrité du territoire du Québec).





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Warman v. Francis (1958)

Logan v. Styres (1958)

Regina v. Sikyea (1964)

Appendix A

The Yorke - Camden Opinion

Following the issuance of the Royal Proclamation (1763) certain lands were reserved to the Indians as "Hunting Grounds" upon which no white settlement was allowed. A prohibition on direct land purchases from the Indians was also instituted. However, the thirst of the Thirteen Colonies for additional fertile lands on the Ohio easily overcame the prohibitions outlined by the Royal Proclamation. Indeed the colonists forwarded a theory supposedly formulated by the English Attorney General (Lord Camden) and Solicitor General (Charles Yorke) in support of their contention that contrary to the 1763 Proclamation, direct land purchases from the natives was valid and procured "as Full and Ample a title as could be obtained ...".

The Yorke-Camden opinion has since become famous, but its origin had nothing to do with the lands of the North American aborigines. The two lawyers in question were Charles Pratt (later Lord Camden) and Charles Yorke (later Baron Morden). In 1757, as the English Attorney General and Solicitor General respectively, they had delivered a commentary on the rights of the East Indian Company for the guidance of the Privy Council in reply to a petition of the corporation. As one scholar has pointed out, from the circumstances in which the law officers delivered the opinion at that time, it represented a specific answer to a question respecting India which the petitioners had raised. Their opinion of 1757 reads as follows:

"As to the latter part of the prayer of the petition relative to the holding or retaining Fortresses or Districts already acquired or to be acquired by Treaty, Grant or Conquest, We get leave to point out some distinctions upon it. In respect to such Places as have been or shall be acquired by treaty or Grant from the Mogul or any of the Indian Princes or Governments(,) Your Majestys Letters Patent are not necessary, the property of the soil vesting in the Company by the Indian Grants subject only to your Majestys Right of Sovereignty over the Settlements as English Settlements & over the Inhabitants as English Subjects who carry with them your Majestys Laws wherever they form Colonies & receive your Majestys protection by virtue of your Royal Charters, In respect to such places as have lately been acquired or shall hereafter by acquired by Conquest the property as well as the Dominion vests in your Majesty by Virtue of your known Prerogative & consequently the Company can only derive a right to them through your Majestys Grant." ¹

This opinion of 1757 drew a distinction between those areas in India conquered by the Crown and those regulated by the company as a corporation under its charter rights. In the latter case, the company had obtained title from the sovereign and independent Indian princes by treaty or grant.

Under what circumstances American land speculators obtained this opinion is an open question. ² What is known is that as early as the spring of 1773 a garbled version of the opinion was in the possession of William Murray, an agent for

Michael and Bernard Gratz, the Philadelphia merchants. The statement in Murray's possession carried a heading denoting that it was the opinion of the late Lord Chancellor Camden and Lord Chancellor Yorke (actually Morden) on "Titles derived by the King's Subjects from the Indians or Natives," and bore the further notation that the document was "a true Copy compared in London the 1st April 1772." This opinion reads as follows:

"In respect to such places as have been or shall be acquired by Treaty or Grant from any of the Indian Princes or Governments; Your Majesty's Letters Patents are not necessary, the property of the soil vesting in the Grantees by the Indian Grants; Subject Only to your Majesty's Right of Sovereignty over the Settlements and over the Inhabitants as English Subjects who carry with them your Majesty's Laws wherever they form Colonys and receive your Majesty's Protection by Virtue of your Royal Charters." 3

Someone had so edited and altered the original opinion of 1757 as to eliminate the references to India and the East India Company. The opinion now failed to note the distinction between lands foreign powers had ceded to the British King and those the King reserved for the use of the North American aborigines. Nor did it include the vital reference to the King's charter by which the company exercised quasi-governmental powers in India. For reasons of expediency the British government had to acknowledge native ownership in the soil to the North American Indians, but vis-à-vis British subjects and foreign powers, the British King, of course, had the dominion as well as the ownership of the lands by virtue of the Peace of Paris. To acknowledge the implication of the edited "Yorke-Camden opinion," one would have to deny that by the Treaty of Paris the British monarch had obtained even a first option to purchase lands of the sovereign American Indian tribes. The British government could not accept such a proposition. By the Proclamation of 1763, the ministry had reserved the lands in the interior under the King's dominion for the use of the Indians.

Nevertheless, on the basis of this questionable opinion, the land speculators began forming a syndicate, the Illinois Company. Its members included Murray, a trader in the Illinois country; his employers, Michael and Bernard Gratz, merchants of Philadelphia; David and Moses Franks; and several Pennsylvania traders, among them Joseph Simons, Levy Andrew Levy, and Robert Callender. 4 There was some duplication in personnel with the "suffering traders" whom Samuel Wharton and William Trent then represented in London. With the Illinois Company partially organized in the spring of 1773, Murray set out for the Illinois country. En route he stopped at Pittsburgh, where he saw George Croghan. Murray wrote his employers that Croghan "assures me, That Lords Camden & Yorke Personally Confirmed to him the Opinion respecting Indian Titles, when C(rogha)n was last in England" 5 From the particular phrasing he used, it would seem that up to this time Murray was not certain of the validity or source of the opinion in his possession. Yet by June 11 he was in the Illinois country, where he presented the document to Captain Hugh Lord, commanding Fort Gage at Kaskaskia. In his report, Lord described the documents as "The opinion of my Lord Camden & the late Lord Morden, that His Majesty's subjects were at liberty to purchase whatever quantity of lands they chose of Indians" Murray then entered into negotiations with different tribes for territory between the Wabash and the Illinois rivers, although Lord had warned him that he would not allow him to settle any of the lands, for this was expressly contrary to royal orders.

The commandant promptly wrote to the Commander-in-Chief in New York for instructions.⁶ In July, Murray contracted a deed⁷ with the tribes for lands; Lord's letter to army headquarters did not reach New York until September 10. By this time General Thomas Gage was in England for a conference with the home government and his temporary replacement, General Frederick Haldimand, did not forward Lord's report until October 6. In the meantime, from the Illinois country Lord wrote to Haldimand with more disquieting news. Following the example Murray had set, two of the local French inhabitants had also purchased lands from one of the minor tribes. The Frenchmen had applied to Lord to register their deeds, but the commandant had refused, for he regarded those lands to be the property of the British monarch, "ceded to him on the peace by the French King."

These land purchases evoked a sharp response in London. The Secretary of State for the American Department himself wrote Haldimand about Murray's activities in the Illinois country. They were "proof," he charged, "of the Unwarrantable Attempts to acquire Title to possessions of lands in a part of the Country where all Settlement has been forbidden by the King's Proclamation". Dartmouth instructed Haldimand to give Captain Hugh Lord at Kaskaskia all possible assistance to enable him to prevent the speculators from establishing any settlements in consequence of "those pretended Titles" and to authorize the local commander in the Illinois country to declare the "King's disallowance of such unwarrantable proceedings" which could have no other effect than to bring the authority of the Crown "into Contempt" and disrupt the peace of the frontier by antagonizing the Indians.⁸ Acting on these orders, Haldimand issued a proclamation on March 10, 1774, prohibiting the private purchase of land from the natives. He also instructed Lord at Kaskaskia to delete from the public notary's register any of the proceedings relating to purchases already made and to declare publicly that they were invalid.⁹

FOOTNOTES TO THE YORKE-CAMDEN OPINION

1. The opinion as quoted above was discovered in the records of the East India Company in London by Professor Wayne E. Stevens and is printed in Shaw Livermore, *Early American Land Companies; Their Influence on Corporate Development* (New York, 1939), 106 n69.
2. The explanations given by Alvord, *Mississippi Valley*, II, 210 n; *Memorial of The United Illinois and Wabash Land Companies* (Baltimore, 1816 ed.), 23-24; Archibald Henderson, *Conquest of the Old Southwest* (New York, 1920), 201, and Abernethy, *Western Lands and the American Revolution*, 116-120, cannot be reconciled with relevant, extant evidence. Compare the accounts in the above works with George Croghan to William Trent, July 13, 1775; *Ohio Company Papers*, II, 6, HSP; James Hogg to Richard Henderson, n.d., Peter Force (ed.), *American Archives*, 4th ser., IV, 543-545; and the letters of George Croghan, William Trent, and Samuel Wharton in the Croghan Papers, Cadwallader Collection, boxes 36, 37, HSP.
3. C.O. 5/1352: 155, LC transcript. This copy was given by William Murray to Dunmore and transmitted to Dartmouth on May 16, 1774.
4. For a list of the original proprietors of the Illinois Company see "Illinois and Wabash Land Company Minutes, 1778-1812," f. 1, HSP.

5. William Murray to Michael and Bernard Gratz, May 15, 1773, Ohio Company Papers, I, 102, HSP. At the time Croghan was in England in 1764, Camden (then Charles Pratt) was Lord Chief Justice of the Court of Common Pleas. In what connection Croghan might have consulted him on titles for Indian grants is not known. The whole story is suspect, for if Croghan was convinced of the sufficiency of his Indian title, why should he merge his grant with the "suffering traders" to obtain confirmation by the ministry?
6. Lord Gage, July 3, 1773, Add. MSS 21730, f. 132, PAC transcript; copy in Gage Papers, WLCL, sent as enclosure in Haldimand to Gage, Oct. 6, 1773.
7. A copy of the deed sent by Murray to Dunmore and transmitted to Dartmouth on May 16, 1774, C.O. 5/1352: 157-160; printed in Memorial of the United Illinois-Wabash Land Companies to the Senate and House of Representatives of the United States (Baltimore, 1816), 33-39.
8. Lord to Haldimand, Sept. 3, 1773, Add. MSS 21731, f. 7; Dartmouth to Haldimand, Dec. 1, 1773, Add. MSS 21695, f. 53, PAC transcripts.
9. A copy of the proclamation, enclosure in Haldimand to Gage, June 10, 1774, Gage Papers. WLCL.

Plan for the future Management of Indian Affairs. (1764)

[Plantations General Orders, XLV. (1764) p. 483.]

Plan for the future Management of Indian Affairs.

1st That the Trade and Commerce with the several Tribes of Indians in North America under the protection of his Majesty shall be free and open to all his Majestys Subjects under the several Regulations & Restrictions hereafter mentioned so as not to interfere with the Charter to the Hudson's Bay Company

2^d That for the better regulation of this Trade and the management of Indian Affairs in general the British Dominions in North America be divided into two Districts to comprehend and include the several Tribes of Indians mentioned in the annexed Lists A and B.

3^d That no Trade be allowed with the Indians in the Southern Districts, but within the Towns belonging to the several Tribes included in such District; and that in the northern District the Trade be fixed at so many posts and in such Situations as shall be thought necessary

4th That all laws now in force in the several Colonies for regulating Indian Affairs or Commerce be repealed

5th That there be one general Agent or Superintendant appointed by his Majesty for each District

6th That the Agent or Superintendant for the Northern District shall be allowed three Deputies to assist him in the Administration of Affairs within his District; and that the Agent or Superintendant for the southern District shall be allowed two Deputies

7th That there shall be a Commissary Interpreter, and Smith appointed by his Majesty to reside in the Country of each Tribe in the southern District

8th That it be recommended to the society for the propagation of the Gospel in foreign Parts, to appoint four Missionaries in each District to reside at such places as the Agent or Superintendant for each District shall recommend.

9th That the Commissaries, Interpreters and Smiths, in each District, do act under the immediate Direction and Orders of the Agent or Superintendant who shall have a power of suspending them in case of misbehaviour and in case of suspension of a Commissary or of a vacancy by death, or Resignation the office shall be executed, until the King's pleasure is known by one of the Deputies to the Agent or Superintendant

10th That the said Agent or Superintendant shall have the conduct of all public Affairs relative to the Indians and that neither the Commander in Chief of his Majesty's Forces in America nor any of the Governors and Commanders in Chief of any of the Colonies or persons having Military Commands in any of the Ports within each of the said Districts do hold any general meetings with the Indians or send any public Talks to them, without the concurrence of the Agent or Superintendant unless in cases of great exigency or when the said Agent or Superintendant may be in some remote part of this District

11th That the said Agents or Superintendants do in all affairs of political consideration respecting peace and War with the Indians purchases of lands or other matters on which it may be necessary to hold any general meetings with the Indians advise and act in Council with the Governors (or the Governors and Councils as the occasion may require) of the several Colonies within their respective Districts and that the said Agents or Superintendants shall be

Councillors extraordinary within each Colony in their respective Districts in like manner as the Surveyors General of the Customs for the northern and southern Districts of America.

12th That the Governor or Commander in Chief of every Colony be Directed to communicate to the Agent or Superintendent of that District within which his Government lyes all such information and intelligence as he may receive respecting Indian Affairs and that the Agents or Superintendants shall in like manner communicate to the Governors all intelligence and information respecting the state of Indian Affairs which may in any wise regard the Security and interest of the said Colonies

13th That no order shall be issued by the Governor or Commander in Chief of any of his Majesty's Colonies or by any Officer having Military Command in any Ports within the Indian Country for stopping the Trade with any Tribe of Indians in either of the said Districts without the concurrence and consent of the Agent or Superintendent for Indian Affairs.

14th That the said Agents or Superintendants shall by themselves or sufficient Deputies visit the several Posts or Tribes of Indians within their respective Districts once in every year or oftener as occasion shall require to enquire into and take an account of the conduct and behaviour of the subordinate Officers at the said Posts and in the Country belonging to the said Tribes to hear appeals and redress all complaints of the Indians make the proper presents and transact all affairs relative to the said Indians

15th That for the maintaining Peace and good order in the Indian Country and bringing Offenders in criminal cases to due punishment the said Agents or Superintendants as also the Commissaries at each Post and in the Country belonging to each Tribe, be empowered to act as Justices of the peace in their respective Districts and Departments, with all powers and privileges vested in such Officers in any of the Colonies and also full power of committing offenders in capital Cases in order that such offenders may be prosecuted for the same and that for deciding all civil Actions the Commissaries be empower'd to try and determine in a summary way all such Actions as well between the Indians and Traders as between one Trader and another to the amount of ten pounds Sterling with the liberty of appeal to the Chief Agent or Superintendant of his Deputy who shall be empower'd upon such appeal to give Judgment thereon which Judgment shall be final and process issue upon it in like manner as on the Judgment of any Court of Common Pleas established in any of the Colonies.

16th That for the easy attainment of Justice the evidence of Indians under proper regulations and restrictions be admitted in all criminal as well as civil causes that shall be tryed and adjudged by the said Agents or Superintendants or by the said Commissaries and that their evidence be likewise admitted by the Courts of Justice in any of his Majestys Colonies or Plantations, in criminal cases subject to the same Pains and Penalties, in cases of false evidence as his Majestys Subjects.

17th That the said Agents or Superintendants shall have power to confer such honors & rewards on the Indians as shall be necessary and of granting Commissions to the principal Indians in their respective Districts, to be War Captains or Officers of other Military Distinctions

18th That the Indians of each Town in every Tribe in the southern District, shall choose a beloved man, to be approved of by the Agent or Superintendent for such District, to take care of the mutual interests both of Indians & Traders in such Town; and that such beloved men so elected and approved in the several Towns shall elect a Chief for the whole Tribe who shall constantly reside with the Commissary in the Country of each Tribe, or occasionally attend upon the said Agent or Superintendent as Guardian for the Indians and protector of

their Rights with Liberty to the said Chief to be present at all meetings and upon all hearings or tryals relative to the Indians before the Agent or Superintendant or before the Commissaries and to give his opinion upon all matters under consideration at such meetings or hearings.

19th That the like establishments be made for the northern Districts as far as the nature of the civil constitution of the Indians in this District and the manner of administering their civil Affairs will admit.

20th That no person having any military Command in the Indian Country, shall be capable of acting as Commissary, for the Affairs of the Indians in either of the above mentioned Districts respectively; nor shall such person having military Command be allowed to carry on Trade with the Indians or to interpose his Authority in any thing that regards the Trade with, or civil concerns of the Indians but to give the Commissary, or other civil Magistrate all assistance in his power whenever thereunto requir'd.

21st That the said Commissaries shall keep exact and regular accounts by way of Journal of all their Transactions and proceedings and of all occurrences in their respective Departments; and shall by every opportunity communicate such transactions and occurrences to the Agent or Superintendant in their respective Districts; which Agent or Superintendant shall regularly by every opportunity correspond with the Commissioners for Trade and Plantations.

22nd That the Agent or Superintendant to be appointed for each District as also the Commissaries residing at the Posts, or in the Indian Country within each District shall take an Oath before the Governor or Chief Judge of any of the Colonies with their respective Districts, for the due execution of their respective Trusts; and they and all other subordinate Officers employed in the Affairs of the Indians shall be forbid under proper penalties to carry on any Trade with them either upon their own account or in Trust for others or to make any purchase of, or except any Grants of Lands from the Indians.

23rd That for the better regulations of the Trade with the said Indians, conformable to their own requests and to prevent those Frauds and Abuses which have been so long and so loudly complained of in the manner of carrying on such Trade, all Trade with the Indians in each District be carried on under the Direction and Inspection of the Agents or Superintendants, and other subordinate Officers to be appointed for that purpose as has been already mentioned.

24th That all persons intending to trade with the Indians shall take out licences for that purpose under the hand and Seal of the Governor or Commander in Chief of the Colony from which they intend to carry on such Trade for every of which licences no more shall be demanded or taken than two shillings.

25th That all persons taking out licences shall enter into Bond, to His Majesty His Heirs & Successors in the sum of with one Surety in the sum of for the due observance of the regulations prescribed for the Indian Trade.

26th That every person willing to give such Security and finding a Surety willing, if required to take an Oath that he is possessed of Property to double the value of the sum he stands Security for shall be intitled to a licence.

27th That every such licensed Trader shall at the time of taking out the licence declare to the Post or Truckhouse at which or the Tribe of Indians with which he intends to trade which shall be specified in the licence itself.

28th That no licence be granted to continue longer than for one Year.

29th That no Person trade under such licence but the Person named in it his Servants or Agents whose names are to be inserted in the Margent; and in case any of the Servants

or Agents named in such licence shall die or be discharged the same shall be notified to the Governor by whom the licence was granted or to the Commissary of the Post or in the Tribe where such Trader carries on Trade to the end that the name or names of any other Servants or Agents employed by the said Trader in the place of those dead or discharged may in like manner be inserted in the Margent of the licence.

29th That all Licences be entered in the Secretarys Office or other proper Office of Record in each Colony where they are taken out; for which entry no more shall be demanded or taken than six pence for each licence and all persons to have free liberty to inspect such entry paying a fee of six pence for the same.

31st That persons Trading with the Indians without a licence and without giving the Security above required or trading at any other Posts or Places than those expressed in their licences do forfeit all the goods they shall be found then trading with and also pay a fine of to His Majesty His Heirs and Successors, and suffer Months imprisonment.

32nd That all Traders immediately upon their arrival at the Posts or Truckhouses in the northern District or in the Tribes in the southern District for which licences have been taken out, and before any goods are sold to or bartered with the Indians do produce such licences to the Commissaries appointed for the Direction and Inspection of the Trade at such Posts or Truckhouses or in such Tribes.

33rd That all Trade with the Indians shall be carried on all Tariffs to be settled and established from time to time by the Commissaries at the several Posts or Truckhouses or in Countries belonging to the several Tribes in concert with the Traders and Indians.

34th That the Commissaries appointed to direct and inspect the Trade at each Truckhouse in the northern district shall be empowered to fix and prescribe certain limits round each Post or Truckhouse within which limits all Trade with the Indians may be commodiously carried on in the most public manner.

35th That all Traders have free liberty to erect Huts and Warehouses within such limits in such order and manner as the Commissary shall with the concurrence of the officer commanding at such Post direct and appoint.

36th That no Trader shall traffic or have any dealings with the Indians without the limits prescribed by the Commissary or other chief Officer appointed for the inspection and direction of the Trade.

37th That each Truckhouse or Post of Trade in the northern District be fortified and garrisoned and that all Traders have free liberty to retire into such Garrison with their effects when ever any disturbance shall arise, or the Commissary at such Post shall represent it to be necessary

38th That no Trader shall sell or otherwise supply the Indians with Rum, or other spirituous liquors, swan shot or rifled barralled Guns.

39th That in Trade with the Indians no credit shall be given them for goods in value beyond the sum of fifty shillings and no debt beyond that sum shall be recoverable by law or equity.

40th That all disputes concerning weights or measures in the buying or selling goods shall be decided by standard weights and measures to be kept in each Post or Truckhouse in the Northern District and in each Town in the Southern District.

41st That no private person, Society Corporation or Colony be capable of acquiring any property in lands belonging to the Indians either by purchase of or grant or conveyance from the said Indians excepting only where the lands lye within the limits of any Colony the soil of

which has been vested in proprietors or corporations by grants from the Crown in which cases such proprietaries or corporations only shall be capable of acquiring such property by purchase or grant from the Indians.

42^d That proper measures be taken with the consent and concurrence of the Indians to ascertain and define the precise and exact boundary and limits of the lands which it may be proper to reserve to them and where no settlement whatever shall be allowed.

43^d That no purchases of lands belonging to the Indians whether in the name and for the use of the Crown or in the name and for the use of proprietaries of Colonies be made but at some general meeting at which the principal Chiefs of each Tribe claiming a property in such lands are present and all Tracts so purchased shall be regularly surveyed by a sworn surveyor in the presence and with the assistance of a person deputed by the Indians to attend such survey and the said surveyor shall make an accurate map of such Tract which map shall be entered upon record with the Deed of conveyance from the Indians.

It is estimated that the annual expence of supporting the establishments proposed in the foregoing plan providing presents for the Indians and other contingent expences may amount to about twenty thousand pounds and it is proposed to defray this expence by a duty upon the Indian Trade, either collected upon the exportation of skins and furs (Beaver excepted) from the Colonies or payable by the Traders at the Posts and Places of Trade as shall upon further examination and the fullest information be found most practicable and least burthensome to the Trade.

A

List of Indian Tribes in the Northern District of North America.

Mohocks	Algonkins	Foxes
Oncidas	Abenakis	Twightwees
Tuscaroras	Shaghiquanoghrones	Kickapous
Onondagas	Hurons	Mascoutens
Cayougas	Shawanece	Piankashaws
Senecas	Delawares	Wawinghtoncs
Oswegachys	Wiandots	Keskeskias
Nanticokes	Powtewatamies	Illinois
Canoyas	Ottawas	Sioux
Tuteeves	Chipeweighs or Missisagis	Miamacs
Sapencys	Meynomenys	Norwidgewalks
Coghawagas	Falsav[o]ins	Arseguntecokes
Canassadagas	Puans	Penobscots
Arundacks	Sakis	S ^t Johns

B.

List of Indian Tribes in the Southern District of North America.

Cherokees	Belaxis	Tunicas
Creeks	Humas	Peluches
Chickasaws	Attucapas	Otagulas
Chactaws	Bayugas	Querphas.
Catawbas		

✻

(2 Dec. 1761).

May it please your Majesty

We have also in obedience to the said Order prepared the Draught of an Instruction for the Governors of your Majesty's American Islands, and for the Governors of those Colonies on the Continent of America, which are under your Majesty's immediate Government containing directions with respect to the tenure of the Commissions to be by them Granted to the Chief Judges and Justices of the Courts of Judicature of the said Colonies both which Draughts, We humbly beg leave to lay before your Majesty for your Royal approbation

SANDYS
ED: BACON
GEORGE RICE
SOAME JENYNS

Whitehall
Dec: 2, 1761.

Draft of an Instruction for the Governors of Nova Scotia, New Hampshire, New York, Virginia, North Carolina, South Carolina, and Georgia forbidding them to Grant Lands or make Settlements which may interfere with the Indians bordering on those Colonies.

WHEREAS the peace and security of Our Colonies and Plantations upon the Continent of North America does greatly depend upon the Amity and Alliance of the several Nations or Tribes of Indians bordering upon the said Colonies and upon a just and faithful Observance of those Treaties and Compacts which have been heretofore solemnly entered into with the said Indians by Our Royall Predecessors Kings & Queens of this Realm, And whereas notwithstanding the repeated Instructions which have been from time to time given by Our Royal Grandfather to the Governors of Our several Colonies upon this head the said Indians have made and do still continue to make great complaints that Settlements have been made and possession taken of Lands, the property of which they have by Treaties reserved to themselves by persons claiming the said lands under pretence of deeds of Sale and Conveyance illegally fraudulently and surreptitiously obtained of the said Indians; And Whereas it has likewise been represented unto Us that some of Our Governors or other Chief Officers of Our said Colonies regardless of the Duty they owe to Us and of the Welfare and Security of our Colonies have countenanced such unjust claims and pretensions by passing Grants of the Lands so pretended to have been purchased of the Indians We therefor taking this matter into Our Royal Consideration, as also the fatal Effects which would attend a discontent amongst the Indians in the present situation of affairs, and being determined upon all occasions to support and protect the said Indians in their just Rights and Possessions and to keep inviolable the Treaties and Compacts which have been entered into with them, Do hereby strictly enjoyn & command that neither yourself nor any Lieutenant Governor, President of the Council or Commander in Chief of Our said Colony of
do upon any pretence whatever upon pain of Our highest Displeasure and of being forth-

with removed from your or his office, pass any Grant or Grants to any persons whatever of any lands within or adjacent to the Territories possessed or occupied by the said Indians or the Property Possession of which has at any time been reserved to or claimed by them. And it is Our further Will and Pleasure that you do publish a proclamation in Our Name strictly enjoining and requiring all persons whatever who may either wilfully or inadvertently have seated themselves on any Lands so reserved to or claimed by the said Indians without any lawfull Authority for so doing forthwith to remove therefrom And in case you shall find upon strict enquiry to be made for that purpose that any person or persons do claim to hold or possess any lands within our said Province upon pretence of purchases made of the said Indians without a proper Colony

licence first had and obtained either from Us or any of Our Royal Predecessors or any person acting under Our or their Authority you are forthwith to casue a prosecution to be carried on against such person or persons who shall have made such fraudulent purchases to the end that the land may be recovered by due Course of Law And whereas the wholesome Laws that have at different times been passed in several of Our said Colonies and the instructions which have been given by Our Royal Predecessors for restraining persons from purchasing lands of the Indians without a Licence for that purpose and for regulating the proceedings upon such purchases have not been duly observed, It is therefore Our express Will and Pleasure that when any application shall be made to you for licence to purchase lands of the Indians you do forbear to grant such Licence untill you shall have first transmitted to Us by Our Commissioners for Trade and Plantations the particulars of such applications as well as in respect to the situation as the extent of the lands so proposed to be purchased and shall have received Our further directions therein; And it is Our further Will and Pleasure that you do forthwith cause this Our Instruction to you to be made Publick not only within all parts of your said Province inhabited by Our Subjects, but also amongst Colony

the several Tribes of Indians living within the same to the end that Our Royal Will and Pleasure in the Premises may be known and that the Indians may be apprized of Our determin'd Resolution to support them in their just Rights, and inviolably to observe Our Engagements with them.

* From: Documents relative to the Colonial History of New York State. Vol.7; p.477.

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Appendix C

Belchers Proclamation, 1762

His Majesty by His Royal Instruction, Given at the Court of St. James the 9th day of December, 1761, having been pleased to Signify,

THAT the Indians have made, and still do continue to make great Complaints, that Settlements have been made, and Possessions taken, of Lands, the Property of which they have by Treaties reserved to themselves, by Persons claiming the said Lands, under Pretence of Deeds of Sale & Conveyance, illegally, Fraudulently, and surreptitiously obtained of said Indians.

AND THAT His Majesty had taken this Matter into His Royal Consideration, as also the fatal Effects which would attend a Discontent among the Indians in the present Situation of Affairs.

AND BEING determined upon all Occasions to support and protect the said Indians in their just Rights and Possessions and to keep inviolable the treaties and Compacts which have been entered into with them, was pleased to declare His Majesty's further Royal Will and Pleasure, that His Governor or Commander in Chief in this Province should publish a Proclamation in His Majesty's Name, for this special purpose;

WHEREFORE in dutiful Obedience to His Majesty's Royal Orders I do accordingly publish this proclamation in His Majesty's Royal Name, strictly injoining and requiring all Persons what ever, who may either willfully or inadvertently have seated themselves upon any Lands so reserved to or claimed by the said Indians, without any lawful Authority for so doing, forthwith to remove therefrom.

AND, WHEREAS Claims have been laid before me in behalf of the Indians for Fronsac Passage and from thence to Nartigonneich, and from Nartigonneich to Piktouk, and from thence to Cape Jeanne, from thence to Enchih, from thence to Ragi Pontouch, from thence to Tedueck, from thence to Cape Rommentin, from thence to Miramichy, and from thence to Bay Des Chaleurs, and the environs of Canso. From thence to Mushkoodabwet, and so along the coast, as the Claims and Possessions of the said Indians, for the more special purpose of hunting, fowling and fishing, I do hereby strictly injoin and caution all persons to avoid all molestation of the said Indians in their said claims, till His Majesty's pleasure in this behalf shall be signified.

AND if any person or persons have possessed themselves of any part of the same to the prejudice of the said Indians in their Claims before specified or without lawful Authority, they are hereby required forthwith to remove, as they will otherwise be prosecuted with the utmost Rigour of the law.

Given under my Hand and Seal at Halifax this Fourth Day of May, 1762, and in the Second Year of His Majesty's Reign.

Appendix D

POST 1763 INDIAN BOUNDARY LINE ADJUSTMENTS

14 October 1768

Treaty of Hard Labor

- settled the back boundary of Virginia.
- at the treaty negotiations Indian agent John Stuart refused to cede a 12 square mile tract of "Indian Hunting Grounds" to Alexander Cameron, Stewart's deputy among the Cherokees.

5 November 1768

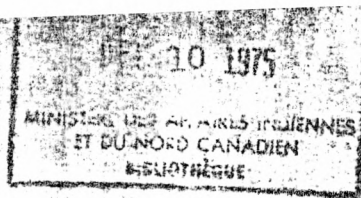
Treaty of Ft. Stanwix

- Sir William Johnson extended Indian boundary line from the confluence of the Ohio and Great Kanawha Rivers to the mouth of the Tennessee River.

18 October 1770

Treaty of Lochaber (renegotiation of Treaty of Hard Labor)

- the Indian boundary line was extended from the Virginia - North Carolina border to a point six miles east of Long Island on the Holston River. It then ran 6 miles above the island, and in a straight course, to the confluence of the Ohio and Great Kanawha Rivers.



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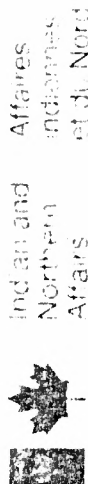
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STATEMENT MADE BY THE
HONOURABLE JEAN CHRÉTIEN
MINISTER OF INDIAN AFFAIRS
AND
NORTHERN DEVELOPMENT
TO
THE YUKON COMMUNITY
August 8, 1973

Communiqué

1-7340

OTTAWA (August 8, 1973) -- Negotiations with respect to native claims in the Yukon have begun. Representatives of the Federal negotiating team have met with the representatives of the Yukon Indians on two occasions. The Yukon Native Brotherhood have put forward their views in a submission they entitled "Together Today for Our Children Tomorrow". The Yukon Association of non-status Indians have also submitted a paper outlining their position.

The outcome of the negotiations in various areas will be felt not only at the Federal but also regional level, whether provincial or territorial. The participation of respective provincial or territorial governments in the negotiating process is viewed as a basic requirement to a successful and lasting result.

The inclusion of Commissioner James Smith on the negotiating team representing Government, or as his alternate one or other of the two Territorial councillors appointed to the Executive Committee of the Yukon Territorial Government, will ensure that everyone's interest will be taken into account throughout the deliberations of the negotiators. Those individuals and organizations in the Yukon having a particular interest in the progress of the negotiations can make their views known to the Commissioner or his alternates as desired.

While the negotiations will of necessity be conducted in private, progress statements will be issued as appropriate when agreed to by both sides. The Federal Government is confident that the people of the Yukon will give their full support to the negotiating

process and that they look forward with equal anticipation to a successful conclusion. This is essential if all the people of the Yukon are to move forward together towards increased cultural, social and economic development.